122-519

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 841.

THE TEXAS TRANSPORTATION COMPANY, ALEXANDER C. HUTCHINSON, ET AL., APPELLANTS,

vs.

George Seligson, Admr of
HENRY SEELIGSON, Dead

FILED FEBRUARY 12, 1886.

No. 851.

HENRY SEELIGSON, APPELLANT.

vs.

THE TEXAS TRANSPORTATION COMPANY, ALEXANDER C. HUTCHINSON, ET AL.

FILED MARCH 8, 1886.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TEXAS.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 841.

THE TEXAS TRANSPORTATION COMPANY, ALEXANDER C. HUTCHINSON, ET AL., APPELLANTS,

vs.

HENRY SEELIGSON.

FILED FEBRUARY 12, 1886.

No. 851.

HENRY SEELIGSON, APPELLANT.

vs.

THE TEXAS TRANSPORTATION COMPANY, ALEXANDER C. HUTCHINSON, ET AL.

FILED MARCH 8, 1886.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TEXAS.

INDEX.

	Original.	Print.
Caption	1	1
Precipe to file transcript from State court and enter appearance, filed Oct. 16, 1884	2	1

JUDD & DETWEILER, PRINTERS, WASHINGTON.

	Original.	Print.
Transcript from State court, filed October 16, 1884	3	1
Petition	3	1
1st supplemental petition	18	7
Citation to E. W. Cave and return	19	7
Texas Transportation Co. and return	21	8
L. Megget and return	23	8
Charles Fowler and return	25	10
A. C. Hutchinson and return	28	11
C. P. Huntington and return	30	12
Petition for removal to circuit court of the United States	33	13
Bond for removal	36	14
Objections to removal	38	15
Decree, or order of removal	39	16
Interrogatories to E. W. Cave	40	16
Commission to take depositions of E. W. Cave	55	21
Deposition of E. W. Cave	57	22
Interrogatories to A. C. Hutchinson	87	33
Commission to take deposition of A. C. Hutchinson	96	36
Deposition of A. C. Hutchinson	98	37
Interrogatories to Charles Fowler	111	42
Commission to take depositions of Charles Fowler	119	45
Deposition of Charles Fowler	122	46
Clerk's certificate	129	49
Appearance of counsel for defendants in U. S. circuit court, filed Oct. 16, 1884	131	49
Entry of appearance on order-book	131	49
Order from minutes, November 3d, 1884. Appearance of defendants	132	50
Demurrer of defendants, filed December 1, 1884	132	50
Notice of demurrer, from order-book	136	52
Order setting defendant's demurrer for argument, filed December 1, 1884	136	52
Entry of above order, from order-book	137	52
Writ to serve copy of above order on defendant's solicitor, issued December 2, 1884	138	53
Order from minutes, demurrer heard and submitted, December 30, 1884	139	53
Order from minutes, on demurrer, January 5, 1885	140	54
Amended bill of complaint, filed January 5, 1885	140	54
Order from order-book, note of filing amended bill	145	56
Motion of defendants to require complainant replead, filed February 2, 1885	145	56
From order-book, entry of above	148	57
Motion of complainant to require defendants to answer, filed February 5, 1885	151	59
From order-book, note of filing of above	152	59
Writ to serve copy of above order, issued February 5, 1885	153	59
Copy of amended bill served on defendant, C. P. Huntington, and marshal's returnt hereon, filed February 19, 1885	154	60
Order of complainant setting down defendant's motion for argument, filed February 20, 1885	160	62
From order-book, entry of above	161	62
Writ to serve copy of above order on defendant's solicitor, issued February 20, 1885	162	63
Order setting down defendant's motion for argument, filed March 2, 1885	164	64

	Original.	Print.
Entry of above from order-book	165	65
Order from minutes, motion of defendants heard and submitted	166	65
Order from minutes, on motion of defendants to require complainant to replead, etc., March 9, 1885	166	65
Motion by complainant to remand, filed May 2, 1885	168	66
Order from minutes, motion to remand overruled, May 4, 1885	170	67
Amendment to original bill of complaint, filed May 4, 1885	171	67
From order-book, note of filing amended bill	199	83
Demurrer of defendants, filed June 1, 1885	199	84
From order-book, note of filing above	202	84
Order setting down defendant's demurrer for argument, filed July 6, 1885	204	86
From order-book, entry of above	205	86
Motion of complainant for leave to renew motion to remand, filed October 5, 1885	206	87
From order-book, entry of above	206	87
Motion of defendants to strike complainant's amended bill from files, etc., filed October 31, 1885	208	88
From order-book, entry of above	211	89
Order from minutes, motion for leave to renew motion to remand granted, and motion to remand heard and submitted, Nov. 18, 1885	215	91
Order from minutes, renewed motion to remand denied, Nov. 19, 1885	216	91
Dismissal and discontinuance as to defendant C. P. Huntington, filed November 19, 1885	216	91
Motion by complainant to remand, filed November 19, 1885	217	92
Order from minutes, renewed motion to remand argued and submitted, November 20, 1885	218	92
Decree and order, remanding the cause, filed January 9, 1886	219	92
Decree and order, remanding the cause, from minutes, January 9, 1886	221	93
Order from minutes, allowing appeals, January 9, 1886	223	94
Bond of defendants, on appeal, filed January 16, 1886	224	94
Bond of complainant, on cross appeal, filed January 28, 1886	228	96
Clerk's certificate	232	98

1 United States Circuit Court, Fifth Circuit, Eastern District of Texas, at Galveston. Equity.

HENRY SEELIGSON, Complainant,
against
THE TEXAS TRANSPORTATION COMPANY, ALEXANDER C. Hutchinson, Charles Fowler, Eber W. Care, Lockwood Megget, and Collis P. Huntington, Defendants. } No. 181.

Be it remembered that in the above entitled and numbered cause, which was removed into this court from the district court of the State of Texas in and for Harris county, in said State, and in which a final order and decree was entered in our said circuit court at its regular November term, 1885, to wit, on the 9th day of January, 1886, Hon. Chauncey B. Sabin, judge, presiding therein, remanding the cause, the following proceedings were had, to wit:

2 *Precipe to File Transcript & Enter Appearance. Filed Oct.* 16, 1884.

OCT. 16, 1884.

DEAR SIR: You will please file the accompanying transcript, Henry Seeligson *vs.* The Texas Transportation — and others, on the equity docket, and enter my appearance as solicitor of defendants.

T. N. WAUL, *Sol'r.*

C. Dart, Esq., cl'k U. S. cir. c't.

Indorsements: "No. 181. Equity. Seeligson *v.* Texas Transportation Co. *et al.* Precipe to enter appearance of counsel for def'ts. Filed Oct. 16, 1884. C. Dart, clerk."

3 *Original Petition. Filed Dec.* 18*th*, 1883, *by J. Burke, C. D. C. H. C., by F. M. Poland, D'y.*

STATE OF TEXAS, *Harris County:*

In District Court to March Term, 1884.

HENRY SEELIGSON
vs.
TEXAS TRANSPORTATION — *et al.* } No. 11363.

To the Hon. James Masterson, judge of said court:

The petition of Henry Seeligson, who resides in the county of Galveston, in the State of Texas, who sues for himself and for the benefit of such of the stockholders of the Texas Transportation Company as elect to take the benefit of the decree in this cause, complaining of the Texas Transportation Company, a body politic & corporate, duly chartered by the laws of Texas, and the principal office of which is in the county of Harris, and of A. C. Hutchinson, who resides in the State of Louisiana, and of Charles Fowler, who resides in the county of Galveston, and of E. W. Cave and L. Meg-

get, who resides in the county of Harris, in said State of Texas; and your petitioner respectfully represents that he is the owner and holder of twenty shares of the capital stock of said company, evi-
dinced by certificate No. 105, dated the 4 day of November,
4 1882, issued by said company, and which stands and appears in petitioner's name on the stock books of said company, and which shares he possesses and holds by and through a transfer from Simon Musina, and which said shares have been for all time since the same were issued acknowledged and recognized by said company, and are so now acknowledged as stock in said company, and are entitled to all the privileges and representation, dividends, & emoluments as the other stock of said company. And your petitioner alleges some time in the year 1875 or 1876 the said Texas Transportation Company was reorganized by one Charles Morgan, who became the owner of two hundred and fifty-nine shares of the capital stock of the said company, which was issued and held in said Morgan's name, out of two hundred and eighty-two shares of said stock issued by said company and no more; that one share of said company's stock stands on the books of said company in the name of the defendant, Charles Fowler; one in the name of E. W. Cave; one in the name of said Hutchinson,
and which are held by them nominally as donations for
5 the purpose of permitting them to be officers of said company under the charter of said company, all of which, with the twenty shares owned and held by petitioner, are the only shares of capital stock ever issued by said company to the present time, amounting to the sum of twenty-eight thousand & two hundred dollars of capital stock issued and now outstanding, each share amounting to one hundred dollars *each;* and that your petitioner is the owner of one-fourteenth of the capital stock of said company, and is entitled to one-fourteenth of its privileges, emoluments, earnings, and dividends, and to share in them to that extent, as well as to one-fourteenth of the property & franchizes of said company. And your petitioner alleges that the said Charles Morgan organized the said company for the purpose of facilitating his business (he having heretofore purchased a control-ing interest in the Houston & Texas Central Railroad Company, and being then the owner of various steamships, and having by his aid opened a ship channel to Clin-
ton, in Harris county), and the carrying trade between the
6 terminus of the said Houston & Texas Central railroad at Houston and the point aforesaid on Buffalo Bayou, and on organizing said company said Charles Morgan elected the said defendants, Cave, Fowler, & Hutchinson, directors of said company, they all being in his employ and ready and willing to subserve his interests, and chosen for that purpose.

And your petitioner alleges that said Charles Morgan, availing himself of the said company and charter, constructed a line of railroad from the city of Houston to the town of Clinton, about eight miles in length, and a branch to Constitution Bend, on Buffalo Bayou, about two miles in length, and built and constructed large and commodious wharves and warehouses at said town of Clinton,

and constructed extensive compresses at said town of Clinton, and acquired large amounts and quantities of real estate, embracing about (600) six hundred acres of land at said town, embracing a large frontage on Buffalo Bayou, at said town, & acquired large quantities of real estate in the city of Houston, full description of which will be given before a trial is had of this cause as exhibits to this petition. And [your] petitioner further
7 alleges that said company also built at the city of Houston large and commodious warehouses, depots, & engine-houses on the land so acquired, and prepared thereon depot grounds, and purchased a large amount of rolling stock and equipments for said road, consisting of engines, passenger, flat, and box cars, hand cars, and other paraphanalia suitable to carry on the business for which said road was intended, all of which property the said company has been using in operating [the] road from the year 1876 up to the present time, and now own- and has in its possession and use, and in which your petitioner is interested as a stockholder as aforesaid, of value not less than three hundred thousand dollars.

And your petitioner further represents that said company in operating the said railroad during and since the year 1876, and in the use of said wharves and compress, have made large sums of money by carrying freight and passengers over said railroad, and by compressing and storing cotton in said compresses and warehouses, amounting yearly to not less than the net sum of fifty thousand dollars, which said company should and did receive by and through its officers aforesaid, amounting altogether and up to the
8 present time to not less than the sum of three hundred and fifty thousand dollars, and which said sum should now be in the treasury of said company if the said company had been cared for and its affairs had been honestly managed for the benefit of said company and its stockholders. And your petitioner alleges that the said defendants, Charles Fowler, E. W. Cave, and A. C. Hutchinson, from the incipiency of said company and the beginning of its business in the year 1876 up to the present time, never had the interest of said company at heart, and have in all things been unmindful of their trusts in the management of said company, and have combined and conspired with each other to cheat and defraud your petitioner, and have acted in the interests of the said Charles Morgan and the interests said Morgan represented up to his death, and since then in the interest of others adverse to the said transportation company and its interests, the act of each being the act of all, in the following manner, to wit:

9 1st. Said defendant, A. C. Hutchinson, was during all of said time the president of the Houston and Texas Central Railway Company, and the said Cave was the treasurer of the same, and the said defendant Fowler represented and was in the employ of others at Galveston, Texas, and all the interests said defendants represented were opposed to the interest of said transportation company, and said defendants acted and furthered the said interests as against the said transportation company.

2d. Said defendants pretended to have stockholders' meetings, of

which the owners of the stock which your petitioner now owns had no notice, on or about the 6th day of May, 1878, as they made it to appear, passed or caused to appear a resolution of the stockholders of said company, and, thereupon, on the same day, they being solely present as stockholders and directors, passed or made to appear a resolution of the directors of said transportation company authorizing or attempting to authorize the said company to execute a note to said Charles Morgan, dated 8th day of April, 1878, due twelve months after date, for the sum of three hundred and thirty-
10 five thousand dollars, to bear ten per cent. interest per annum from date, and to secure the same with all and singular the property of said company, and in pretended pursuance thereof said company, by said officers, acting against the interests of said company & combining & conspiring to defraud said company and your petitioner, did execute, dated April 8, 1878, a deed of trust to secure said note an- all the property of said company, its franchises and privileges, and upon all sums due it and to become due, and upon every species of property and income then had or might in future have, as will appear by a certified copy which will be introduced in evidence on the trial, of which defendants will take notice and produce the original; and petitioner alleges said note was given without consideration for a large part and not more than two hundred thousand dollars of said note was at the time a proper charge against said transportation company, and the bill of items cited in said resolutions was fraudulent and fictitious and was for large sums added and inserted to defraud said sompany, and said note had
11 no consideration for one hundred and thirty-five thousand dollars; and petitioner alleges that the interest on said note was and is exhorbitant, and was the result of the fraudulent acts of the said defendants.

3rd. Said defendants, Cave, Hutchinson, and Fowler, well knowing the fraudulent character of said note, and that the same to the extent aforesaid was without consideration, when the same was about to become barred by the statute of limitations, in the month of April, 1883, pretending to hold a directors' meeting, passed a pretended resolution and caused the same to be entered upon the minute-books of the company, whereby they fraudulently attempted (not representing the interests of the said company, but adverse interests) to prevent said note from being barred by the statute of limitations, and thus save said company from paying, if it was otherwise barred, the said fraudulent sum, for which there was no consideration.

4th. That said defendants, during all the business of said company, kept no books nor did they cause any books to be kept of the business of said company, wherein were entered a memorandum of its affairs and transactions; on the contrary, fraudulently
12 concealed the same, and, when pressed, for a long period denied a statement of the affairs of said company to your petitioner, and fraudulently undertook to manufacture and make up books from pretended memoranda.

5th. That said defendants kept no cash-book nor caused any to be kept to show what cash had been recieved by said company, and

have no such book by which your petitioner can inform himself what cash is on hand or what had been recieved or expended.

6th. Said defendants have never caused the cash recieved by said company to go into its regular treasurer's hands and be paid out by him on proper draft, although said company has a treasurer and has always had such treasurer as your petitioner is informed and believe-, but instead thereof they have appointed the same for their own use.

7th. That said defendant- have never paid out of the large income of said company any part of the said note or interest thereon, though said company has yearly been making the sum per year hereinbefore alleged, and although the said Charles Fowler, as treasurer of said company, has verified reports for the aggregate years 1877, 1879, 1880, 1881, & 1882, the sum of two hundred & thirty-five
13 thousand dollars, at the comptroller's office, sworn to, and which is much less than said company should have reported.

8th. That said defendants have made no return or showing whatever of the amounts received for compressing cotton at the presses of said company at Clinton.

9th. That said defendants have not kept proper accounts of the expenditure of money paid out by them for said company.

And your petitioner alleges that all the acts of omission aforesaid of said defendants have been a wilful and fraudulant disregard of the right of the stockholders of said company and of your petitioner.

And your petitioner further alleges that he is informed and believes, and from such information and belief so charges, that the said note above and hereinbefore referred to is barred by the statute of limitation and is no longer a charge against the said company, and that the same, after it was due, has been transferred to some person to petitioner unknown and whom he prays to make a party to this bill or petition so soon as he may ascertain the name of such person. And your petitioner further represents that he is en-
14 titled to have the said sum of money which said company has on hand and has earned, to wit, the sum of not less than three hundred and fifty thousand dollars, distributed as dividends on the capital stock of said company, whereof the sum of twenty-five thousand dollars is due petitioner as such dividend on his said shares of stock.

And petitioner alleges that, believing he had a right to such dividends and believing the said monies were on hand and in the treasury of said company, he caused to be made application of the proper officer of said company to know what money there was of said company on hand, and was informed that there was no money on hand or in the treasury of said company.

And petitioner alleges that of said defendant directors the defendant A. C. Hutchinson is president of said company, the said Charles Fowler is treasurer, and the said E. W. Cave is vice-president of said company, and they have fraudulently combined and conspired, as such directors and as such officers, to not declare any dividend on

the capital stock of said company, and to not pay your
15 petitioner or any other stockholder any part of the monies earned and in the hands of themselves as officers of said company, or to make or declare any distribution of the same; but, on the contrary, they have and do now fraudulently keep the same for the purpose of inguring your petitioner and said company, and for the purpose of furthering and promoting the interests of themselves and others unfriendly to said company and to its interests and to your petitioner, and that they will not act in the faithful performance of the duties imposed upon them by the trust which they hold.

And petitioner further alleges that he is ignorant of the details of the business of said company, and has never been consulted or noticed by the defendants, and he cannot state the items of income and expence of the said company until he makes discovery of the same.

And petitioner further alleges that the said defendant, L. Meggett, is secretary of said company, and has in his possession whatever of papers data and memoranda of the business of said company that exists; but your petitioner does not charge said Meggett
16 with any fraudulent interest in the premises, but only in so far as he carries out the orders and directions of the other defendants and makes entries and memoranda of the acts of the other defendants and thereby makes himself a party to their acts. And your petitioner alleges that he has for a long period of time late past sought relief from the said defendants without success, and has discovered that said defendants intend to cheat and defraud him, and to render his said interest in said company valueless by the abuse of their trust as aforesaid, and that he has no redress as a part of said company by virtue of his stock, and he has reason to fear and does fear that said defendants will destroy the value of his stock and of his interest in said company unless he invokes the aid of this honorable court in asserting them. Wherefore he sues and prays that said defendants may be cited in terms of the law to appear and answer this petition; that the said note hereinbefore described and the said deed of trust securing the same may be annulled as not bind-
17 ing any longer on said company; that he may have leave to amend this petition in the particulars set forth where he cannot fully state and to make other parties necessary when discovered; that he may have full discovery from the defendants of all matters touching the affairs of the said company, and that they and each of them shall produce all the necessary books and memoranda of said company before your honor; that such auditors and officers may be appointed in this cause as the nature of the case requires; [that] *the* he have a decree for such sum as dividend against said company and officers of said company as he is entitled to; that a receiver may be appointed on the hearing of this cause to take possession of the property and business of said company; that, if it should appear that said company is insolvent, then that it be wound up and its property and franchises be sold and its debts be paid, and the balance, if any, be distributed among the stockholders, and that he have such other and further relief in law and

equity as he may be entitled to and the nature of the case require, and in duty bound will ever pray.

18 (Signed) W. P. HANIBLEN,
Att'y for Petitioner.

1st Supplemental Petition. Filed Feb. 9th, 1884. J. Burke, C. D. C. H. C.; F. M. Poland, D'y.

HENRY SEELIGSON
v.
THE TEXAS TRANSPORTATION COMPANY *et al.* } No. 11363.

And now comes the plaintiff in the above cause and, as prayed in his original petition to be allowed, files this his supplemental petition and alleges that he has discovered that C. P. Huntington is the owner of the note fully described in his original petition, dated on or about the 8th day of April, 1878, payable to Charles Morgan, due twelve months after date, for the sum of three hundred and thirty-five thousand dollars, bearing ten per cent. interest per annum from date, and petitioner alleges that the residence of said C. P. Huntington is unknown, but that the said Huntington is temporarily residing in the county of Harris, State of Texas.

19 Wherefore petitioner prays that he may have process for said Huntington direc- to the sheriff or any constable of Harris county *for said Huntington* and general relief, and as in duty bound, &c.

(Signed) W. P. HAMBLIN,
Att'y for Petitioner.

Citation to E. W. Cave.

In District Court to March Term, 1884.

STATE OF TEXAS, *County of Harris:*

The State of Texas to the sheriff or any constable of Harris county, Greeting:

You are hereby commanded to summon E. W. Cave, if to be found in your county, to be and appear at the district court to be held in and for the county of Harris, at the court-house thereof, in the city of Houston, on the last Monday of May, 1884, then and there to answer the petition of Henry Seeligson, exhibited against him, the said E. W. Cave, L. Megget, Charles Fowler, A. C. Hutchinson, and the Texas Transportation Company, wherein the said Henry Seeligson prays judgment against the said defendants for the sum of twenty-five thousand dollars as dividends from said

20 company wrongfully withheld from plaintiff, and that a certain note and deed of trust securing the same, pretended to have been executed by said company on the 8th day of April, 1878, due twelve months after date, for the sum of $335,000, be set set aside and annulled, and that a receiver be appointed at the hearing, and that such auditors be appointed as may be necessary, and if it should appear that said company is insolvent then that said

company's affairs be wound up, its debts paid, and the balance be distributed among its stockholders, and that plaintiff have such dividends decreed to him as he is entitled to and general —, for causes set forth in said petition filed on the 18th day of December, 1883, in cause No. 11363 on the docket of the district court of Harris county, and a true copy of this writ you will deliver to defendant E. W. Cave.

Herein fail not under penalty of the law and of this writ make due return.

Witness J. Burke, clerk of said court, and the seal thereof, at office in the city of Houston this 18th day of December, 1883.

(Signed) J. BURKE,
Clerk District Court, Harris County,
[LEGAL SEAL.] By F. M. POLAND, *D'y.*

21 Came to hand December 23rd, 1883, at 10 o'clock a. m., and executed December 28th, 1883, by delivering to E. W. Cave, the within-named defendant, in person, a true copy of this writ.

(Signed) JOHN J. FANT,
Sheriff of Harris Co.,
By H. R. GLASSCOCK,
Deputy.

(*Citation to the Texas Trans. Co.*)

In District Court. To March Term, 1884.

STATE OF TEXAS, *County of Harris:*

The State of Texas to the sheriff or any constable of Harris county, Greeting:

Your are hereby commanded to summon the Texas Transportation Company, if to be found in your county, to be and appear at the district court to be held in and for the county of Harris, at the court-house thereof, in the city of Houston, on the last Monday in March, 1884, then and there to answer the petition of Henry Seeligson exhibited against it, the said Texas Transportation Company, Charles Morgan, E. W. Cave, A. C. Hutchinson, and L. Miggett, wherein the said Henry Seeligson prays judgment against the said defendant for [the] sum of twenty-five thousand dollars as
22 dividends from the said company wrongfully withheld from plaintiff, and that a certain note and deed of trust securing the same, pretended to have been executed by said company on the 8th day of April, 1878, due twelve months after date, for the sum of $335,000, be set aside and annulled; that a receiver be appointed at the hearing, and that such auditors be appointed as may be necessary, and, if it should appear that said company is insolvent, then that said company's affairs be wound up, its debts paid, and the balance distributed among its stockholders, and that plaintiff have such dividends decreed to him as he is entitled to and general —, for causes set forth in said petition filed on the 18th day of December, 1883, in cause No. 11363 on the docket of the district court of Harris

county, and a true copy of this writ you will deliver to said defendant.

Herein fail not under penalty of the law, and of this writ make due return.

Witness J. Burke, clerk of said court, and the seal thereof at office in the city of Houston this 18th day of December, 1883.

23 [L. S.] (Signed) J. BURKE,
Clerk District Court Harris County,
By F. M. POLAND, *D'y.*

Issued December 18th, 1883.

J. BURKE, *C. D. H. C.,*
By F. M. POLAND, *D'y.*

Received this writ at 10 o'clock a. m., December 19th, 1883, and executed the same January 3rd, 1884, by leaving at the principal office of the within-named defendant in the city of Houston, in person, a true copy of this writ during business hours.

J. J. FANT,
Sheriff of Harris County,
By H. R. GLASSCOCK, *D'p'y.*

(*Citation to L. Meggett.*)

In District Court. To March Term, 1884.

STATE OF TEXAS, *Harris County:*

The State of Texas to the sheriff or any constable of Harris county, Greeting:

You are hereby commanded to summon L. Meggett, if to be found in your county, to be and appear at the district court to be held in and for the county of Harris, at the court-house thereof, in the city of Houston, on the last Monday in March, 1884, then and

24 there to answer the petition of Henry Seeligson, exhibited against him, the said L. Meggett, Charles Fowler, A. C. Hutchinson, the Texas Transportation Company, and E. W. Cave, wherein the said Henry Seeligson prays judgment against the said defendant for the sum of twenty-five thousand [dollars] as dividends from the said company wrongfully withheld from plaintiff, and that a certain note and deed of trust securing the same pretended to have been executed by said company on the 8th day of April, 1878, due twelve months after date, for the sum of $335,000, be set aside and annulled; that a receiver be appointed at the hearing, and that such auditors be appointed as may [be] necessary, and if it should appear that said affairs be wound up, its debts paid, and the balance be distributed among its stockholders, and that plaintiff have such dividends decreed to him as he is entitled to and general —, for causes set forth in said petition filed on the 18th day of December, 1883, in cause No. 11363 on the docket of the district court of Harris county, and a true copy of this writ you will deliver

25 to said defendant, L. Meggett.

Herein fail not under penalty of the law, and of this writ make due return.

Witness J. Burke, clerk of said court, and the seal thereof, at office in the city of Houston this 18th day of December, 1883.

(Signed) J. BURKE,
Clerk District Court Harris County,
By F. M. POLAND, *D'y.*

Issued Dec. 18th, 1883.

J. BURKE,
C. D. C. H. C.,
By F. M. POLAND, *D'y.*

Came to hand Dec. 23rd, 1883, at 10 o'clock a. m., and returned executed Dec. 26, 1883, by delivering to the within-named defendant, L. Meggett, in person, a true copy of this writ.

(Signed) JOHN J. FANT,
Sheriff Harris Co.,
By H. R. GLASSCOCK, *Deputy.*

(*Citation to Charles Fowler.*)

In District Court. To March Term, 1884.

THE STATE OF TEXAS, *County of Harris:*

The State of Texas to the sheriff or any constable of Galveston county, Greeting:

You are hereby commanded to summon Charles Fowler, if
26 to be found in your county, to be and appear at the district court to be held in and for the county of Harris, at the court-house thereof, in the city of Houston, on the last Monday in March, 1884, then and there to answer the petition of Henry Seeligson exhibited against him, the said Charles Fowler, the Texas Transportation Company, E. W. Cave, A. C. Hutchinson, and L. Meggett, wherein the said Henry Seeligson prays judgment against the said defendant for the sum of twenty-five thousand dollars as dividends from said company wrongfully withheld from the plaintiff, and that a certain note and deed of trust securing the same pretended to have been executed by said company on the 8th day of April, 1878, due twelve months after date, for $335,000, be set aside and annulled; that a receiver be appointed at the hearing, and that such auditors be appointed as may be necessary; and if it should appear that said company is insolvent, then that said company's affairs be wound up, its debts paid, and the balance be dis-
27 tributed among its stockholders, and that plaintiff have such dividend decreed to him as he is entitled to and general relief in the premises for causes set forth in set petition filed on the 18th day of December, 1883, in cause No. 11363 on the docket of the district court of Harris county, and a true copy of this writ you will deliver to said defendant, Charles Fowler, with the accompanying certified copy of plaintiff's petition.

Herein fail not under penalty of the law, and of this writ make due return.

Witness J. Burke, clerk of said court, and the seal thereof, at office in the city of Houston, this 18th day of December, 1883.

[L. S.]

J. BURKE,
Clerk District Court, Harris Co.,
By F. M. POLAND, *D'y.*

Issued Dec. 18th, 1883.

J. BURKE,
C. D. C., H. C.,
By F. M. POLAND, *D'y.*

Rec'd this writ at 8 o'clock a. m. Dec. 19th, 1883, and executed the same on the 19th day of December, A. D. 1883, at 12.30 o'clock p. m. by delivering to Charles Fowler, the within-named defendant, in person, in the county of Galveston, a true copy of this writ,
28 together with the accompanying certified copy of the plaintiff's petition.

(Signed) WM. P. OWENS,
Sheriff G. Co.,
By GEO. J. TOWNSEND,
Deputy.

Fee, $1.50, due.

(*Citation to A. C. Hutchinson.*)

In District Court, Harris County.

THE STATE OF TEXAS, *County of Harris:*

HENRY SEELIGSON
vs.
THE TEXAS TRANSPORTATION COMPANY, A. C. HUTCHINSON, Charles Fowler, E. W. Cave, and L. Meggett. } No. 11363.

The State of Texas to A. C. Hutchinson, resident of the parish of Orleans, in the State of Louisiana, Greeting:

You are hereby required to appear at the district — to be held in and for the county of Harris, State of Texas, at the court-house thereof, *of* in the city of Houston, on the last Monday in March, 1884, then & there to answer the petition of H. Seeligson exhibited against you, A. C. Hutchinson, the Texas Transportation Company, Charles Fowler, E. W. Cave, & L. Meggett, wherein the said
29 Henry Seeligson prays judgment for the sum of twenty-five thousand dollars as dividends from the said company wrongfully withheld from plaintiff, and that a certain note and deed of trust securing the same, pretended to have been executed by said company on the 8th day of April, 1878, due twelve months after date, for the sum of $335,000, be set aside and annulled; that a receiver be appointed at the hearing, and that such auditors be appointed as may be necessary, and if it should appear that said company is insolvent then that said company'- affairs be wound up, its debts paid, and the balance be distributed among its stockholders, and

that plaintiff have such dividend decreed to him as he is entitled to and general relief in the premises for causes set forth in said petition filed on the 18th day of December, 1883, in cause No. 11363 on the docket of said court, a certified copy of which said petition accompanies this notice and will be delivered to you.

Herein fail not to appear, under penalty of the law, in accordance with this notice.

30 Witness James Burke, clerk of said court, and the seal thereof, at office in the city of Houston, this 18th day of December, 1883.

(Signed) J. BURKE,
C. D. C. H. C.,

[L. S.] By F. M. POLAND, *Dy.*

Issued this 18th day of December, 1883.

(Signed) J. BURKE,
Clerk D. C. H. C.

Received this notice this 26 day of December, 1883, and executed the same on the 26 day of December, 1883, by delivering to the within-named defendant, A. C. Hutchinson, a true copy of this notice, together with a certified copy of plaintiff's petition accompanying the same; and affiant further swears that he is disinterested in said cause wherein said A. C. Hutchinson is defendant.

(Signed) CHAS. F. WARD.

Sworn to & subscribed this 26th day of December, 1883, at New Orleans, La.

In witness whereof I have hereunto set my hand and seal of office at New Orleans, La., this day and date above.

[NOTARY SEAL.] (Signed) A. HERO,
Notary Pub.

(*Citation to C. P. Huntington.*)

In District Court. To March Term, 1884.

THE STATE OF TEXAS, *County of Harris:*

31 The State of Texas to the sheriff or any constable of Harris county, Greeting:

You are hereby commanded to summon C. P. Huntington, if to be found in your county, to be and appear at the district court to be held in and for the county of Harris, at the court-house thereof, in the city of Houston, on the last Monday in March, 1884, then and there to answer the petition of Henry Seeligson exhibited against him, the said C. P. Huntington, E. W. Cave, L. Meggett, Charles Fowler, A. C. Hutchison, and The Texas Transportation Company, wherein the said Henry Seeligson prays judgment against the said defendant for the sum of twenty-five thousand dollars as dividends from the said company as wrongfully withheld from plaintiff, and that a certain note and deed of trust securing the same pretended to have been executed by said company on the 18th day of April, 1878,

due twelve months after date, for the sum of $335,000, be set aside and annulled; that a reciever be appointed at the hearing;
32 and that such auditors be appointed as may be necessary, and if it should appear that said company is insolvent then that said company's affairs be wound up, its debts paid, and the balance be distributed among its stockholders, and that plaintiff have such dividends decreed to him as he is entitled to, and general relief, for causes set forth in said petition filed on 18th day of December, 1883, and supplemental petition filed Feb'y 9th, 1884, in cause No. 11363 on the docket of the district court of Harris county, and a true copy of this writ you will deliver to said defendant, C. P. Huntington.

Herein fail not under penalty of the law, and of this writ make due return.

Witness J. Burke, clerk of said court, and the seal thereof, at office, in the city of Houston, this 9th day of February, 1884.

[L. s.] (Signed) J. BURKE,
Clerk District Court, Harris County.
By F. M. POLAND, *D'y.*

33 Issued February 9th, 1884.

J. BURKE,
Clerk D. C., H. C.
By F. M. POLAND, *D'y.*

Came to hand February 15th, 1884, at 10 o'clock a. m., and returned executed March 13th, 1884, by delivery to C. P. Huntington, the within-named defendant, in person, a true copy of this writ.

JOHN J. FANT,
Sheriff Harris County,
By H. R. GLASSCOCK,
Deputy.

Petition for Removal to Circuit Court of U. States. Filed March 31, 1884.
J. Burke, C. D. C., H. C., by F. M. Poland, D'y.

District Court. Bro't to March Term, A. D. 1884.

STATE OF TEXAS, *Harris County:*

HENRY SEELIGSON, Plaintiff,
vs.
THE TEXAS TRANSPORTATION COMPANY, L. MEGGETT, A. C. Hutchinson, Charles Fowler, E. W. Cave, & C. P. Huntington, Defendants. } No. 11363.

To the Honorable James Masterson, judge of said court:

Your petitioner, Collis P. Huntington, respectfully shows that the matter and amount in dispute in the above-stated suit exceeds,
34 exclusive of costs, the sum of five hundred dollars; that this petitioner was, at the commencement of said suit, and now is, a citizen of the State of New York; that the said A. C. Hutchinson was then, and is now, a citizen of the State of Louisiana; that the Texas Transportation Company, Charles Fowler, E. W. Cave, and

L. Meggitt were then, and now are, citizens of the State of Texas; that Henry Seeligson, the plaintiff in said suit then was, and still is, a citizen of the State of Texas.

Your petitioner states that there is a controversy in said suit which is wholly between citizens of different States, and which can be fully determined as between them, to wit: a controversy between said Seeligson, plaintiff, and your petitioner, and a controversy between your petitioner on one side, and in which the interests of the said Seeligson, the Texas Transportation Company, and the other defendants, officers of said company, is on the other side of said controversy; and your petitioner offers herewith a bond, with good and sufficient surety, for his entering in the circuit court of the United States for the eastern district of Texas,
35 holding its session at Galveston, on the first day of its next session, a copy of the record of said suit, and for paying all costs that may be awarded by said circuit court if said court shall hold that this suit was wrongfully or improperly removed thereto. Petitioner prays that this honorable court proceed no farther herein, except to make the order of removal required by law, and to accept the said surety and bond, and to cause the record herein to be removed into the said circuit court of the United States for the eastern district of Texas, sitting in Galveston, in said district and State.

(Signed) T. N. WAUL,
Att'y of Petitioner.

I, Thomas N. Waul, being duly sworn, depose and say I am the attorney for Collis P. Huntington, the petitioner in the above-entitled cause; that I have read and know the contents of said petition, and that the statements and allegations therein contained are true as I verily believe.

(Signed) T. N. WAUL.

Sworn to and subscribed before me, March 31st, A. D. 1884.
36 [NOTARY SEAL.] (Signed) J. C. KIDD,
Notary Public, Co. of Harris, Tex.

Bond for Removal.

Know all men by these presents that I, Collis P. Huntington, as principal, and John J. Atkinson and Sam'l M. McAshan, as sureties, are held and firmly bound unto Henry Seeligson in the penal sum of five hundred dollars; [to] the payment of which, well and truly to be made unto the said Henry Seeligson, his heirs and assigns, we bind ourselves, our heirs, representatives, and assigns, jointly and severally, firmly by these presents. The conditions of this obligation is that the said Collis P. Huntington, having petitioned the district court of Harris county, State of Texas, for the removal of a suit, in which Henry Seeligson is plaintiff, the Texas Transportation Company, A. C. Hutchinson, Charles Fowler, E. W. Cave, L. Meggett, and Hollis P. Huntington, defentants, to the circuit court of the United States [in] and for the eastern district of Texas, sitting at

Galveston: Now if the said Collis P. Huntington, petitioner,
37 shall enter in the said circuit court of the United States on the first day of its next session a copy of the record in said suit, and shall well and truly pay all costs that may be awarded by said circuit court of the United States if said court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation to be void; otherwise to be in full force and effect.

Witness our hands & seals this 31st day of March, A. D. 1884.

(Signed) C. P. HUNTINGTON. [SEAL.]
By T. N. WAUL, *Att'y.*
JOHN J. ATKINSON. [SEAL.]
SAM'L M. McASHAN. [SEAL.]

District Court. March Term, 1884.

STATE OF TEXAS, *Harris County:*

Personally appeared before me John J. Atkinson and Sam'l M. McAshan, residents of said State and county, and are the sureties in the foregoing bond, who, being duly sworn, do*th* depose and say, each for himself: "I am worth the sum of five hundred dollars over and above all my debts and liabilities, and exclusive of property
38 exempt by law from execution; that I have property in the State of Texas and in this county liable to execution of the value of more than five hundred dollars."

(Signed) JOHN J. ATKINSON.
SAM'L M. McASHAN.

Subscribed & sworn to before me March 31st, 1884.

[NOTARY SEAL.] J. C. KIDD,
Notary Public, Co. of Harris, Texas.

Approved & filed March 31st, 1884.

J. BURKE,
C. D. C., H. C.
By F. M. POLAND, *D'y.*

Objections to Removal.

HENRY SEELIGSON *vs.* TEXAS TRANSPORTATION COMPANY *et. al.*

And now comes the plaintiff and opposes the motion of C. P. Huntington to remove said cause to the circuit court of the United States at Galveston, and says: 1st. That said cause should not be removed, because said *said* petitition shows that this cause is not a controversy where all the parties on one side are citizens of a foreign State and all on the other side are citizens of this State; because said application to remove does not show said defendant
39 Huntington is entitled to have the same removed; because said application does not show that their cause is separable; because said application has not a sufficient affidavit thereto for removal; because there is nothing shown by said application which

takes the jurisdiction from this court, and respondent prays that said cause be not removed.

(Signed) W. P. HAMBLIN,
For Def'ts.

Filed Mar. 31st, 1884.

J. BURKE,
C. D. C., H. C.,
By F. M. POLAND, *D'y.*

Decree. March 31st, 1884.

HENRY SEELIGSON, Plaintiff,
vs.
THE TEXAS TRANSPORTATION COMPANY, A. C. HUTCHINSON, CHARLES FOWLER, E. W. CAVE, L. MEGGETT, and C. P. HUNTINGTON. } No. 11363.

The defendant, C. P. Huntington, on this 31st March, 1884, having filed his petition praying for the removal of the cause into the circuit court of the United States for the eastern district of Texas, holding its session in the city of Galveston, pursuant to the
40 statutes of the United States in such cases made and provided, and having also filed and made a bond with good and sufficient surety for his entering in said circuit court on the first day of its then next session a copy of the record in this suit, and for paying all costs that may be awarded by said court if it shall hold that this suit was wrongfully or improperly removed there*by*: Now, on motion of T. N. Waul, attorney for said Huntington, it is hereby ordered that this court accepts the said bond and surety offered by said petitioner, and that this cause be wholly removed & transferred for trial or further or other proceedings into the said circuit court of the United States for the eastern district of Texas.

In District Court, Harris County.

HENRY SEELIGSON
vs.
THE TEXAS TRANSPORTATION COMPANY, A. C. HUTCHINSON, CHARLES FOWLER, E. W. CAVE, and L. MEGGETT.

Interrogatories propounded to E. W. CAVE, one of the defendants, resident of the county of Harris:

41 Interrogatory 1st. In whose employ were you prior and up to the time the Texas Transportation — was reorganized by Charles Morgan to build a railroad from Houston to Clinton, north of Buffalo bayou? Is it not *time* that you were in the employ of Charles Morgan? Is it not *time* that you purchased the stock of said Texas Transportation Company for Charles Morgan? For what purpose was the road built from the city of Houston north of Buffalo bayou by the Texas Transportation Company? Is it not true that the said road was built for the purpose of connecting the Houston and Texas Central railroad with the steamship line of Charles Morgan?

Interrogatory 2nd. Is it not true that all the capital stock then issued was purchased by you for Charles Morgan prior to building said road north of Buffalo bayou? Is it not true that you and A. C. Hutchinson and Charles Fowler were then and prior to building said road in the employ of Charles Morgan? Is it not true that you and said Hutchinson and Fowler — working for the interests of Charles Morgan when you built said road?

42 Int'y 3rd. Were not you and said Fowler and Hutchinson made directors in said Texas Transportation Company for the purpose of promoting the interests of Charles Morgan at the time that you and they became the directors of said company? How many shares of stock did you and they each own then, ever since, and own now in said Texas Transportation Company? Is it not true that you and they each owned one share, and that share was placed in your and their names for the purpose of enabling you and them to be directors in the Texas Transportation Company? Is it not true that said shares were given to you and them? If nay, how much did you pay for the same?

Interrogatory 4th. Is it not true that prior to building said road north of Buffalo bayou the said Charles Morgan had acquired a control-ing interest in the Houston and Texas Central Railway Company? Is it not true that you were elected by said Morgan, or by the directors of the said Houston & Texas Central Railroad Company, an officer of said Houston and Texas Central Railroad Company,

43 and have you not been an officer of said last-named company ever since; is it not true that said Charles Morgan also acquired a controlling interest in the Buffalo Bayou Ship-channel Company, and have you not been at all times since the Texas Transportation railroad was built north of Buffalo bayou an officer of such ship-channel company; if yes, what office did you hold in said Buffalo Bayou Ship-channel Company?

Interrogatory 5. Is it not true that you have been for a long period of time prior to, at, and since the construction of said Texas Transportation Company's road north of Buffalo bayou employed by Charles Morgan and kept in office in the several companies by the influence and vote of Charles Morgan and the stock he owns, and have you not at all times sought to promote the interests of said Morgan in all things up to the time of his death, and the interest of said Morgan's heirs since?

Interrogatory 6. Were you not at all times under the con-

44 trol of said Charles Morgan in your action, and did not he and those representing him keep you in power and place in said several companies for the purpose of subserving his interests and doing his bidding in said companies and otherwise; if nay, please state when, if ever, since the year 1875, you have enjoyed or exercised an office in any of said several companies without the aid of said Morgan's stock and influence; is it not true that you have at all times exercised all your influence for Charles Morgan's interest up to the time of his death, and since his death for his estate and heirs? If nay, state when, if ever, you acted contrary to his interests.

Interrogatory 7th. Is it not true that you have at all times since

you were employed by Morgan had a desk in the office of the Houston and Texas Central Railway Company; have you not at all times been the treasurer of said company and manager of its fina-l affairs?

Interrogatory 8th. Is it not true that the said Charles Morgan had, at the time the Texas Transportation Company's road was
45 constructed north of Buffalo bayou to Clinton, a line of steamships plying between Brashear City and the town of Clinton, or intended to ply between said places, and was not said road constructed north of Buffalo bayou for the purpose of facilitating the transmission of freight and passengers from said steamship line to the Houston and Texas Central Railway Company—were you not the agent of said Morgan in constructing said road? If nay, whose agent were you?

Interrogatory 9th. Is it not true that Charles Fowler was the agent of Morgan at Galveston, and has not the said Fowler from the year 1875 up to Morgan's death been in the employ of said Morgan and in his interest, and since said Morgan's death in the employ of those who represent his estate?

Interrogatory 10th. Is it not true that A. C. Hutchinson has been in the employ of said Morgan and one of the principal managers of said Morgan's affairs for a long period of years? Is not said Hutchinson a relation of said Charles Morgan, or a member
46 of said Morgan's family?

Interrogatory 11th. Have not you, said Fowler, and Hutchinson at all times, *acted together* in the several capacities you and they have severally held in said several possessions, acted in concert for the interest of Charles Morgan up to the time of his death?

Interrogatory 12th. Have you not at all times since said Texas Transportation Company was organized, in the year 1875 or 1876, been vice-president of said Texas Transportation Company, and have you not been treasurer of the Houston and Texas Central Railway Company, and have you not also held an office in the Buffalo Bayou Ship Channel Company during the same time? We[re] not all of those several companies controlled by the stock which Charles Morgan held in them? Was not the stock of Charles Morgan at all times voted in your favor in the said companies to keep you in position as an officer in said companies?

Interrogatory 13th. Was not the line of the Texas Trans-
47 portation changed from the south to north side of Buffalo bayou? Was not such change made in the interest of the Houston and Texas Central Railway Company and Charles Morgan's line? Was not said Texas Transportation Company lines of road built to be tributary to said railway company and steamship lines?

Interrogatory 14th. Is it not true that said A. C. Hutchinson has been president of the Houston and Texas Central Railway Company and also president of the Texas Transportation Company's road — was constructed north of Buffalo bayou? Does not said Hutchinson reside in the city of New Orleans, and have not you

represented him in all things touching the interest of said transportation company and under your supervision? If nay, under whose supervision *was* such affairs conducted?

Interrogatory 15th. By whom were the earnings of said Texas Transportation Company received; with whom were they deposited, and who became the custodian of the funds of said company*s*?

48 Were not such earnings deposited with you? Did you ever pay such earnings over to the treasurer of said transportation company? Did you have any books wherein wer- entered any such earnings so received by you; if yes, where are such books or book?

Interrogatory 16th. Has not Charles Fowler been the treasurer of the Texas Transportation Company during the time you have been its vice-president? Has Charles Fowler had the funds of said Texas Transportation Company in his possession and keeping? Did said Fowler disburce such funds? Is it not a fact that the funds of the company never went into his hands at all?

Interrogatory 17th. Is it not true that Charles Fowler never made any report of his acts as treasurer to said Texas Transportation Company? Is it not true that A. C. Hutchinson never made any reports to said Texas Transportation Company, as required by law? Is it not a fact that neither A. C. Hutchinson nor Charles Fowler *never*

49 made any personal examination of the books of the company, and did they not derive all their information from yourself?

Interrogatory 18th. Who prepared the annual report to the comptroller? Did you not do it? Did not the secretary do it at your dictation? Did you not make such reports or cause them to be made and then obtain*ed* the oath of Charles Fowler on your representations?

Interrogatory 19th. Is it not true that Simon Musina was the owner of twenty shares of stock now owned by plaintiff? Did not said Musina call upon you several times at your place in the office of the Houston and Texas Central Railway Company and request to be shown the books of the Texas Transportation Company? Did you not then state to said Musina that the said company had kept regular books according to law, but that said books were in the custody of the president, at New Orleans, and that you had written to said president for a statement of the affairs of the company, and

50 that said president had promised a statement, and that you from time to time, extending over a year, promised to furnish said Musina such statement? Is it not a fact that after being repeatedly pressed you finally confessed that there were no such books, but that L. Meggett, the secretary, was engaged in making up such books from the memoranda and papers in the office of said company?

Interrogatory 20th. Is it not true that no books were kept of said transportation company, and that the same were prepared within the last year by your exclusive direction and supervision? Is it not true that said books do not show the daily transactions of said company? Is it not true that said books were manufactured to mislead

Simon Musina and others holding stock, except Morgan, and the directors rather than to show the exact condition of the company?

Interrogatory 21. Is it not true that there is no cash-book in said Texas Transportation Company's office showing the receipts
51 and disbursements of the said company's monies? Did you not take the funds of said company and place them with the funds with the Houston and Texas Central Railway Company, and collect the earnings of said transportation company with the Central railway earnings without distinction? Do you not manage such earnings as treasurer of the Central Railway Company?

Interrrogatory 22nd. It is not a fact that you keep a cash-book for the Houston and Texas Central Railway Company? Does such book show any entry of cash item belonging to the transportation company? Have you made any report or reports as treasurer of said Central railway wherein there are any credits to the transportation company? Is it now true that said Houston and Texas Central Railway Company is the recipient of all the monies of the transportation company?

52. Interrogatory 23. Is it not ture that you sacrificed the interests of the Texas Transportation Company to serve the Central Railway Company and to make the latter company the more important?

Interrogatory 24th. In all your own dealings and the dealings of your codefendants, Hutchinson and Fowler, have not you, and each of you, acted as if the said said Texas Transportation — belonged exclusively to Charles Morgan? Is it not true that you were compelled at all times up to Charles Morgan's death to act in all matters affecting the Texas Transportation Company as said Morgan dictated, and is it not true that you were under compulsion so to act? Is it not true that you kept your place by serving said Morgan? Have you not been said Morgan's agent in all important matters in Houston, Texas, for the past seven years?

Interrogatory 25th. Is it not true that A. C. Hutchinson, the president of the Texas Transportation Company, never, or seldom
53 ever, was present at any of the meetings of the directors or stockholders of said company held at the office of the company? Is it not true that you or Charles Fowler, or both of you, voted and represented Charles Morgan's stock at the stockholders, meetings of said company? If you say that A. C. Hutchinson was ever present at any of the meetings of the directors of stockholders state how often and when.

Interrogatory 26th. Is it not true that Charles Morgan never was present at the stockholders' meetings, and did not he trust all his interests to you or Charles Fowler, or both of you?

Interrogatory 27th. Will you please state who is now the holder and claims to own the note given by you, representing said company, to Charles Morgan for the sum of three hundred and thirty-five thousand dollars, dated the 8th day of April, 1878, due twelve months from date? When did such person become possessed
54 of said note? Has any part of said note been paid, principle or interest? If yes, how much? If nay, why has no payment been made on said note?

Interrogatory 28th. Who is present while you are answering these interrogatories? Do you answer them *seriatim* as asked by the notary, in his presence, or do you write your answers and then give them to the notary?

Interrogatory 29th. State if you have answered all of the foregoing interrogatories fully without any evasion or mental resolution.

(Signed) W. P. HAMBLEN,
Att'y for Plaintiff.

STATE OF TEXAS, *Harris County*.

I, James Burke, clerk of the district court of Harris county, Texas, hereby certify that the foregoing is a true copy of the original interrogations now on file in my office.

Witness my hand and seal of said court this Dec. 18th, 1883.

J. BURKE,
C. D. C., H. C.,
By F. M. POLAND, *D'y.*

55 *Commission to Take Depositions.*

THE STATE OF TEXAS:

To the clerk of the district court, judge, or clerk of the county court, or any notary public in and for the county of Harris, State of Texas, Greeting:

We hereby authorize and require you or either of you to summon E. W. Cave, a resident of your county, to come before you forthwith, and that you then and there carefully and fully examine him upon his oath first to be taken before you touching the annexed interrogatories:

1st. That you reduce his answers so taken to writing in proper form and cause the same to be subscribed and sworn to by said witness.

2. That you certify under your hand and seal of office that said answers were sworn to and subscribed before you.

3. That you seal up in an envelope the answers so taken, together with the annexed interrogatories and this commission, with your name across the seal.

4. That you endorse on the envelope the names of the par-
56 ties to this suit and the name of said witness.

5. That you direct the package to the "clerk of the district court of Harris county, Houston, Texas."

6. That if said package is sent by mail the postmaster or his deputy shall endorse thereon that he received it from your hands and sign his name thereto; or if you entrust it to private conveyance, as provided by the statute, you will apprize the person recieveing it that it must be delivered to the clerk of this court by himself in person.

Which evidence, so taken as above, is to be used on the trial of a suit now pending in the district court of Harris county, in said State of Texas, wherein Henry Seeligson is plaintiff and The Texas

Transportation Company, E. W. Cave, Charles Fowler, A. C. Hutchinson, and L. Meggett are defendants.

Herein fail not, but made due return of this writ.

Witness J. Burke, Jr., clerk of the district court for the county of Harris, and the seal of said court, at office in Houston, this
57 18th day of December, A. D. 1883.

J. BURKE,
Clerk of the District Court of Harris County,
By F. M. POLAND, *D'y.*

Issued the 18th day of December, 1883.

J. BURKE,
C. D. C., H. C.,
By F. M. POLAND, *D'y.*

In District Court, Harris County, Tex.

HENRY SEELIGSON
v.
TEXAS TRANSPORTATION CO. *et al.*

Answers and depositions of E. W. CAVE, of Harris county, to the accompanying interrogatories propounded to him in the above-entitled cause, taken before me, F. M. Poland, a notary public in and for Harris county, under and by virtue of the annexed commission:

1. To 1 int'y he answers: I was not in the employ of any one I was attending to my own private business and was an officer of the Buffalo Bayou Ship Channel Company, and have been since its organization in about 1870. It is not true that I was in the employ of Charles Morgan. Being anxious on account of my identity with the ship channel enterprise, inaugurated
58 by the Buffalo Bayou Ship Channel Company, to secure a railway connection with the terminus of that work on deep water on Buffalo bayou, and believing that [it] was more advantageous to the commercial interests of Houston that such connection s-ould be made by means of a railway than by transfer by barges, as was talked of, I confer-ed with parties owning a considerable amount of the stock of the Texas Transportation Company, which company was then entirely dormant, and finding that I could purchase part of this stock, and desiring to interest Mr. Morgan further in the enterprizes of Houston, I secured the consent of Mr. Morgan to take all of the stock that I might purchase and convey. I held only a small amount, I think, of the stock. When I became director almost a majority of the old stockholders continued as stockholders. The leading holders of this minority, being entirely familiar with the proceedings, retained their holdings in the company for some time afterwards. I purchased
59 the stock afterwards, and I do not think I completed all the purchases until the spring of 1876. I did not purchase all the stock, but endeavored to do so, and would have purchased Mr. Mussina's stock, only he told me he was unable to deliver it. I afterwards, I think during 1876, conveyed to Charles Morgan

all of the stock which was then held by me on the books of the company, excepting one share, which I retained and now own. There was no time when I could not have bought any of the stock I desired to hold. It was built for the purpose defined in its charter. The Houston and Texas Central railway was not a party to its construction in any way that I know of. It was intended to connect with all railways in convenient reach.

2nd. To 2nd int'y he answers: I only purchased part of the stock. I may have been connected with negotiations of the other stock conveyed about that time. A number of the original stock-
60 holders—nearly a majority—retained their stock for some time after it was understood and believed that those in the directory were friendly to a connection, as stated in my answer previously given. I was not in the employ of Charles Morgan. I have always understood that Charles Fowler was agent of the Morgan steamship line at Galveston, and that Mr. Hutchinson was one of the firm of C. A. Whitney and Co., who were advertising agents of that line in New Orleans. I was working in the interest of the company and to promote the objects of the charter, and believe the other gentlemen were doing likewise. The company had no road or assets of any value, as I believe, when we entered the directory. A railway was constructed under our management without any contributions from the stockholders, thereby carrying out the object of the charter and giving the stockholders a chance to realize something on their stock, if the enterprize could be made productive, and the advances used in construction repaid..

61 3rd. To 3rd int'y he answers: I was elected a director as — have believed by the stockholders to carry out the objects of the charter, and I certainly would not have acted in any other manner. I have answered the foregoing in part in my answers to the 1st int'y. I am now the owner of a share of stock. I only know of the stock ownership of the others as shown by the books and do not recollect. I believe each now own- a share of stock ; I own one share of stock, which enables me to be a director, if elected by the stockholders. No stock was placed in my name for any such purpose. I am not aware of any such intention on the part of the others. No shares of stock were given to me ; I purchased at various prices; I think at about 30 to 50 cents on the dollar of face value, and hold mine accordingly.

4th. To 4th int'y he answers: Charles Morgan had no interest (unless he may have owned a few shares) in the Houston and
61½ Texas Central Railway Company untill after the Texas Transportation Company's railroad was built, nor did he acquire a controlling interest in the stock of the H. and T. C. R'way Co. for about a year after Texas Transportation Company's railway was completed & under operation. I was elected a director of the H. & T. C. R'y Co. in 1877 by the board of directors, then composed of Messrs. Groesbeeck, W. R. Baker, and other citizens of Houston, certain citizens of another State, of which Charles Morgan was not one. I was afterwards elected a director by the stockholders and an officer by the directors, & have been so elected ever since. Charles

Morgan had acquired a control-ing interest in the Buffalo Bayou Ship Channel Company, and I have been an officer in said company ever since. I was a director and the president of said company & had been a director and officer for some years prior to Mr. Morgan's obtaining any interest in it. The directors in the company were nine in number—all citizens of Houston at the time I was
62 elected—and at no time has there been less than six citizens of Houston on said board, and the management of said company has at all times been in their control

5th. To 5 int'y he answers: I have never been in the employment of Charles Morgan, as before stated; I have at times acted as agent for him in special matters; I have been elected and retained in office in the companies with which I have been connected by the action of the stockholders and directors, and have at all times sought to promote the interests of all the stockholders; I may presume that any stock held by Mr. Morgan so long as he remained a stockholder was voted for me, as my election has, I believe, been unanimous; I have never represented the heirs of Charles Morgan.

6. To 6 interrogatory he answers: I answer emphatically no; I believe he knew me better than to attempt anything of the kind, as stated before; that I believe, so long as Charles Morgan was a stockholder, he voted for me; he has not been a stockholder for several years, and I am still a director and officer. Neither during the
63 life of Charles Morgan- or since his death have I exercised any influence or performed any action in the companies in which I am a director except for the interest of all the stockholders nor to promote any special interest, in so far as the interest- of Charles Morgan were concerned, to those *to those* of the other stockholders; I represented him as a stockholder; I had no reason to believe I did not satisfactorily represent all the stockholders of the Texas Transportation Company until after it became doubtful whether a sale could be made of the stock of Mr. Musina. I have never regarded his special interest in my action as a director or officer, and have only considered his interest in common with that of the other stockholders.

7. To 7th int'y he answers: Not having been in the employment of Mr. Morgan, answer would seem unnecessary; but I will state, since my connection with the H. and T. C. R'w'y Co. I have occupied a desk in its office at Houston. I have not at all times
64 been the treasurer of the Houston & Texas Central Railway Company; I was not elected treasurer until the spring of 1877; the entire affairs of the company are managed by the president and board of directors, and in the interim of the meetings of the board by the executive committee; I am, as treasurer, custodian of its funds.

8. To 8th int'y he answers: The Morgan Steamship Line being about to engage in the trade of Buffalo bayou, it was the interest of the Texas Transportation Company to secure a share of its business and other business of Buffalo bayou upon the opening of deep-water navigation. The road was constructed, as provided in its charter, to facilitate the transmission of freight and passengers between Buf-

falo bayou and Houston, but without special reference to the H. & T. C. R'y Co. or any other company. The only means by which the Texas Transportation Company could maintain an existence or derive any revenues was by receiving business from the Mor-
65 gan Steamship Line and other vessels plying in Buffalo bayou. The Texas Transportation Company's railway now existing was only partially constructed under its charter. The charter only authorized the construction of the road to a point on Buffalo bayou near Constitution Bend. That portion of the *the* road was constructed under the authority of its charter, but with moneys entirely advanced by Charles Morgan, with the understanding, as I was informed, that he had the right to retain practical possession and a lien on the road until those advances were paid or satisfactorily arranged and secured. The balance of the road from near a point of connection with the road & Clinton, with all the improvements there, constituting valuable and important part of the property, and connecting the line of the company with steamship navigation, was constructed as an individual enterprise by Charles Morgan without any charter. He purchased land and the right of way, and it was well known to be his individual property, although
66 operated in connection with the Texas Transportation Company. I acted for the company in part in reference to the road constructed under its charter, and as agent for him in part in reference to the road and improvements constructed by him without a charter. The individual portion of the line was included in the settlement made with him in 1878, and became a part of the company's line under its amended charter. My recollection is that the road was constructed under contract after proposals were solicited. I have answered above whose agent I was.

9. To 9th int'y he answers: I only know and it is generally understood that Charles Fowler has been the agent of the Morgan Steamship Line at Galveston; he has been advertised as such. So far as I know he has not represented the estate of Charles Morgan since his death.

10. To 10 int'y he answers: It was understood generally and from advertisement made that C. A. Whitney & Co., of New Orleans, were the agents of the Morgan Steamship Line, and represented
67 Charles Morgan in his general transportation interests in Louisiana and Texas. A. C. Hutchinson was a member of that firm. I have no further knowledge of their connection with Mr. Morgan, but I do know that Mr. Morgan often gave very close personal supervision to his private interests in Texas. I have every reason to believe that there is no relationship between them either by blood or marriage.

11. To 11th int'y he answers: My action in connection with these gentlemen has generally been harmonious, but I have differed with them with respect to various matters connected with management, and have never hesitated to express my views and contend for them. I was controlled by the interests of the company and not by the individual interests of Mr. Morgan, and I believe they acted from the same reasons.

12. To 12th int'y he answers: The Texas Transportation Company was organized in 1867. I was not elected a director in that company until 1875. I was elected vice-president also in 1875, and have been ever since. I was not elected treasurer of the H.
68 & T. C. R'l'ay Co. until 1877, and have been treasurer since. I was an officer in the Buffalo Bayou Ship Company at and before and since, and was a director and officer of the Buffalo Bayou Ship Channel Co. before Charles Morgan acquired any stock in either company. I have never parted with any of my stock in the Buffalo Bayou Ship Channel Co. Charles Morgan was not at all times a stockholder in the Texas Transportation Company. Previous to my becoming a director the directors had been elected by the stockholders, as I have been; the same number of directors are now elected as were elected by Mr. Mussina and his costockholders before I became identified with the company. I was elected a director in the Buffalo Bayou Ship Channel Company by the stockholders before Chas. Morgan became a stockholder in that company, and have been ever since.

Charles Morgan did for some time during his life having a controlling interest in said companies, but not at all times, as is hereinbefore stated. The directors of the Buffalo Bayou Ship Channel Company elect the officers, and, as stated before, about two-
69 thirds of them are yet well-known and leading citizens of Houston, Texas. They elect the officers. I think that all stockholders present have voted for me as director for several years. When I was first elected a director and officer of the Texas Transportation Company, and for some time afterwards, a large amount of the stock of that company was held by the original stockholders. The old stockholders in part were present and participated in the meeting which elected me as a director, and the president of the company from its inception presided at the meeting and, I think, voted for my election. I think I received an unanimous vote. I think that the stock of Charles Morgan has been voted for me from the time he became a stockholder until he ceased to be one, as I received an unanimous vote of all the stock represented in the meeting. I have been elected a director and officer since he ceased to be a stockholder, and, I think, by an unanimous vote. I have never heard the right denied of those owning a majority of the stock to elect the board of directors.

13. To 13th int'y he answers: An effort had been made by the Texas Transportation Company to construct a line of
70 railway on the south side of Buffalo bayou, but it had failed after some grading had been done, and the work had been abandoned for several years before I became identified with the company. My recollection is that by the books of the company the president at that time, and who was authorized to provide for the construction of the company's road made some years before I went into the company, reported that the entire outlay made on said grade, and including salaries and expences, stated the amount named was about $16,000.

This abandoned grading was not regarded by me or the other di-

rectors as of any value whatever and the company had no assets of any value. It was found after careful survey that the proper and most practicable and most economical line of the road was on the north side of Buffalo bayou, and the road was constructed on that side of the bayou within the limits of its charter, as hereinbefore stated.

It was not constructed in the interest of the H. & T. C. R. W. Co. or any other line, but to serve the purpose of its charter. It was not built to be tributary to that company, but for the general
71 purposes of a railway. It could have no connection, under its charter, with steamships of the Morgan line as their terminus, but had its initial point and was constructed from a point on Buffalo bayou authorized by its charter, which is several miles above any point yet reached by the Morgan Steamship Line. It had no chartered right to be constructed from any point further down the bayou than was named in its charter.

14. To 14th int'y he answers: A. C. Hutchinson has only been president of the Houston & Texas Central Railway Company since some time about 1882. He has been president of the Texas Transportation Company since 1875. He resides in New Orleans, but has been frequently in Texas. I have never represented A. C. Hutchinson unless I may possibly held his proxy at some stockholders' meeting. I have acted as vice-president of the Texas Transportation Company under the supervision of the board of directors.

15. To 15th int'y he answers: The earnings of the Texas Transportation Company were rec*ie*ved by its regular agents properly appointed; funds were paid out by them in the course of business as usual, and claims were paid by them upon vouchers.
72 I have not had charge of the finances of the Texas Transportation Company, but have not known of any surplus earnings for deposit outside of its agents. The funds in the hands of the agent were paid out when required for expences and needed for repairs and improvements, much of which business was under the charge of the agent and under instructions of the president. Charles Fowler was one of the agents at Houston for a number of years and also treasurer. No earnings were ever deposited with me and therefore none were deposited with any one by me or paid out by me. I have never received the earnings of the company, and therefore paid nothing over to the treasurer, but disbursed during the construction of the road, under the company's charter, part of the funds advanced by Charles Morgan, and also part of the funds used in constructing his road from the company's line to a connection with his steamships, but vouchers for the same were always returned covering each transaction. My desire was to settle each transaction seperately. I did not rec*ie*ve the earnings, and therefore kept no books.

16. To 16th int'y he answers: Charles Fowler, agent, has rec*ie*ved and disbursed considerable amount of the funds and
73 earnings of the company. Charles Fowler was also the treasurer of the company.

17. To 17th int'y he answers: The reports made by Charles

Fowler are shown by the vouchers for the monies received and paid by him, and are on file. Written report has been made by the president to the board of directors, when he deemed necessary and proper, according to law, and other reports were made in person to the board. The books of the company have at all times been under the supervision of the president, and Charles Fowler, when requested so to do, has made personal examination of its affairs. All of the affairs of the company were under the control of the board of directors. They only desired information from me respecting such matters as at the time were in my hands as a director or officer.

The president at all times gave a personal supervision of the affairs, and I only acted in such matters in his absence from the State. My connection with the affairs of the company is shown by the books and papers in the hands of the secretary.

18. To 18th int'y he answers: My recollection is that the
74 form of reports to the comptroller were at first prepared by myself and the general superintendant from data received from the secretary, the company's agents, and the general superintendant's department. In late years, I think, the reports were prepared in like manner by the general superintendant. My custom was, after the report had been verified by the general superintendant, to send the same to Charles Fowler, treasurer, for his verification. His oath was not obtained, as stated.

19. To 19th int'y he answers: Mr. Simon Mussina appeared as owner of 20 shares on the stock-book. When I entered the company I endeavered to purchase that stock at about the time I bought other stock. This brought me in contact with him as a stockholder. He wanted to sell, but he told me that the stock was beyond his control. I had known him for many years. We had conversations about the stock and about the affairs of the company before I went into the Central road in 1877. I recognized him as a stockholder, and, as there was no reason for concealment, I talked to him as one stockholder would to another about the affairs
75 of the company. Mr. Mussina knew then that I had been elected a director and vice-president of the Texas Transportation Company and that Mr. Morgan was then advancing the money for the construction of the road. It was generally known, and I am satisfied I told him so. He came to see me several times at the office of the H. & T. C. R'y Co. I regarded his visits for a long time as of an informal and social character until some time in 1882, when he made a formal request to see the books of the company. I then referred him to the secretary, L. Meggett, Houston, who was the custodian of the books and papers of the company. Later, in 1882, after his stock had been transferred to the plaintiff, Mr. Mussina called on me, stating that he represented Mr. Seeligson. I referred him to the secretary and had no talk about the affairs of the company. About this time a letter from Mr. Seeligson to the president was sent to me. My recollection is I wrote Mr. Seeligson that the books of the company were in the hands of the secretary and
76 subject to the inspection of the stockholders, or words to that effect. I had no conversation with Mr. Mussina, as a stock-

holder, about the affairs of the company after he requested to be shown the books, and my answer to that request was prompt, as stated above. I had no conversation with Mr. Mussina as the representative of the plaintiff as a stockholder but as stated, and my reference of him to the secretary for information was prom-t. The plaintiff has never called on me in person about the affairs of the company. All of the conversation with Mr. Mussina referred to occurred before the plaintiff became a stockholder, and all of the transactions complained of, and respecting which I have answered, occurred before the plaintiff became a stockholder. I have been advised that since the stock of Mr. Mussina was transferred to the plaintiff Mr. Mussina has called on the secretary as the representative of the plaintiff and examined the books of the company, and that all books and papers were placed subject to his inspection. I always recog-

77 nized Mr. Mussina as a stockholder, although he never attended any of the stockholders' meetings, nor has the plaintiff attended any stockholders' meetings. I may have told Mr. Mussina that the books were being posted up and that some data necessary to complete the same were in the hands of Messrs C. A. Whitney & Co., New Orleans. Their account with the company was a necessary part of the entry on the books.

The president properly had supervision of the books, but have no recollection of stating that the books were in his hands; I made no promise to furnish Mr. Mussina a statement; I never believed that an individual stockholder could demand a statement for his special benefit. I gave him a synopsis of certain matters in the report to the comptroller from data I had, and which was published in the comptroller's reports; on the contrary, I told him he could not expect clerks to be employed to make up special statements for him when the company had no money to pay interest on its mortgage debt and its chief officers were getting no salaries.

78 During these visits at the office of the H. and T. C. R'y Co. — continued to give him all information in my general knowledge respecting the affairs of the Texas Transportation Company. I believe that Mr. Mussina knew that I was not the proper custodian of the books and papers of the company, but that the secretary was, and that the company had a regular place of business.

Some time in 1881 or 1882, I think it was, he called at the H. & T. C. R'y Co.'s office, and told me that he had secured the stock certificate, and afterwards showed it to me. He made but one request to be shown the books of the company, which was some time in 1882; I think during the summer of that year. I replied as above stated. I was advised about that time that he did go to the secretary, and that all the books and papers of the company were placed subject to his inspection. My recollection is I was also advised that he had called upon the agent at Houston, and that his books were subject to his inspection; also that I had informed them that

79 as a stockholder he had the right to examine the books. His stock was afterwards transferred to the plaintiff. The plaintiff wrote me in the fall of 1882, I think, officially before the

stock was transferred. I wrote him that the stock-books of the company were open for transfer, or words to that affect.

I never heard Mr. Mussina take any exception to any action taken until some time in 1881 or 1882, while he was a stockholder, when he expressed the opinion that the rate of interest on the Morgan debt was too high. I told him as no interest had been paid I felt quite sure that if he could guarantee six per cent. the holders would be glad to reduce the rate, and I thought, also, that he could have the mortgage debt transferred to him at any time at par.

Some time, I think, in 1882, and about the time that Mr. Mussina's visits to me were more frequent, a broker in Houston, Mr. Charles Linsley, offered Mr. Mussina's stock to me for sale. I told him I did not want it. After conversing with Mr. Linsley I
80 wrote the managers of Morgan's Louisiana and Texas Railway and Steamship Company in New Orleans, asking if they wanted to buy the stock. I advised Mr. Linsley that they did not want it. Mr. Linsley afterwards renewed the subject, stating that he could then sell it at $2,000 for the 20 shares of stock. I told him I did not want it, and I knew it was useless to write the Morgan company any further about it.

I did not tell Mr. Mussina that the president had promised to send me a statement. My recollection is that he said he would write the president. I told him I had not the least objection to this.

I may have told Mr. Mussina that the secretary was engaged in posting up the books from data in the office of the company.

The above contains the substance of my conversations with Mr. Mussina as far as I can recollect.

20. To 20th int'y he answers: The books were prepared by the secretary, and not under my special direction and supervision. Books were kept at the office of the Houston agent. Books of the com-
81 pany were also in the hands of the secretary, and the books were made from the accounts and vouchers of all adjusted business, and I think the ledger and journal were not posted up until some time in the winter of 1882 or early in 1883. It is absolutely untrue that the books were made for any such purpose, and Mr. Mussina should know it is untrue.

21. To 21st int'y he answers: I think the Houston agent kept a separate cash-book. The general cash receipts and disbursements of the Texas Transportation Campany are entered in the company's ledger and journal and verified by vouchers. I have never taken the funds of the Texas Transportation Company and placed them with the funds of the Houston & Texas Central Railway Company. I have not collected the earnings of the Texas Transportation Company and placed them with the funds of the Houston & Texas Central Railway Company. Since I have been treasurer of the H. & T. C. R. W. Co. none of the funds of the Texas Transportation Company have come into my possession as
82 treasurer. Freights have been interchanged, but statements have been made as usual with other connecting lines.

22. To 22d int'y he answers: While I believe that the man-

ner of conducting the business of the Houston & Texas Central Railway Company is not a proper subject of inquiry in this suit, yet I answer that the Houston & Texas Central Railway Company has a cash-book. No entries exist showing cash belonging to the Texas Transportation Company. Entries may have been made showing cash received or paid in settlement of freight business, as is usual with other lines; have made no such reports. The Houston and Texas Central Railway Company is not in receipt of all or any of the monies of the Texas Transportation Company, except as is the case with all connecting lines. It has collected and paid advance charges on through freight, but settlements have been made as is usual with other roads.

23. To 23d int'y he answers: It is not true that I sacri-
83 ficed the interests of the Texas Transportation Company or any other interest that I have in my hands for the benefit of any interest whatever.

24. To 24th int'y he answers: I have not so acted. I have acted in the interest of all of the stockholders. I believe the other gentlemen have acted in like manner.

I suppose I have kept my office by attending to my duties prom-tly and faithfully. I have never at any time been a mere dependant on any one for place or substance.

I have never been the general agent of Charles Morgan in Houston, Texas. I have represented him in a few important matters; in others I have not.

25. To the 25th int'y he answers: A. C. Hutchinson president, was occasionally present, as shown by the books. I do not remember the exact times. A quorum of directors was present at all directors' meetings held. The number of directors was three, and was the same number that existed long before I was elected. Charles Fowler and myself made a quorum, and in the absence of A. C. Hutchinson the meeting was held by the quorum of directors, and meetings
were held regularly at the times and places provided by
84 the charter and by-laws. I think I have acted a- proxy for Charles Morgan; Charles Fowler may also have acted.

I do remember exactly.

I have already answered that A. C. Hutchinson was occasionally present; do not recollect the times—the record shows.

26. To 26th int'y he answers: Charles Morgan was never present in person that I recollect of. His stock was represented by whoever held his proxy.

27. To 27th int'y he answers: I do not know who is now the holder or owner of the note and mortgage referred to. I have understood that it was one of the assets of Morgan's Louisiana and Texas Railway and Steamship Company.

I have answered all that I know about this matter above.

No part of the note or interest had been paid within my knowledge. I suppose because there were no earnings that could be applied to its payment.

28. To 28th int'y he answers: No one is present but the notary, except occasionally such parties as may have called to see him

85 on business, while I am making my answers. I write my answers in the presence of the notary, and handed them to him.

29. To the 29th int'y he answers: I have considered my answers before I gave them to the notary; my answers have been made almost entirely from memory, as I have not been afforded time to make an examination of the books and papers, and my other duties and business would not permit the same in the short time allowed. The books and papers of the company were not before me while writing my answers. If by the question whether I have answered the interogatories *seriatim* is meant to inquire whether I have seen any of the subsequent interrogatories before answering any, I state that when notice was served on me by the notary to appear before him I requested to see the interrogatories. I was informed that he had been advised by the plaintiff's attorney that I must answer the interrogatories *seriatim* without seeing the subsequent question, and that he, the notary, regarded the law as requiring the same. I asked of the notary a brief time in order that I might consult my counsel; this was courteously accorded Acting under advice of my
86 counsel, I called at the district clerk's office, and was informed that the papers in the case were, at the time, in the hands of the plaintiff's attorney. I advised my counsel, Gen'l Waul, of this fact, whereupon he advised me—

"Where the interrogatories of a party to the suit is taken by his adversary, it is necessary that the interrogatories should be filed in the clerk's office; and as there are no cross-interrogatories it is important you should see the line of interrogatories and their object, so that you may answer the same understandingly, and give such explanations as you may deem necessary, and, as you inform me that upon application the papers are in the hands of the counsel for the plaintiff, I will apply for copies, and furnish you with them, and upon their reception you should, in answering, reply fully categorically, and give such statements as will clearly explain your testimony, together with all such matters as will tend to a full exposition of the things enquired of."

I have received no further instructions from my counsel.

I have so answered as I would have done of my own *rotation*, and have only added to the cat*i*gorical replies under the advice of my counsel, as shown above; and although I regard many of the
87 questions as spiteful and totally irrelevant to the issues involved, I have nevertheless answered them without any evasion or mental reservation.

E. W. CAVE.

I, F. M. Poland, a notary public in and for Harris county, do certify that the foregoing answers of E. W. Cave were taken before me.

Subscribed and sworn to before me by said witness; to certify which I hereto set my hand [and] affix my seal of office, March 10, 1884.

F. M. POLAND,
Notary Public, Harris Co., Texas.

In District Court, Harris County.

HENRY SEELIGSON
vs.
THE TEXAS TRANSPORTATION COMPANY, A. C. HUTCHINSON, CHARLES FOWLER, E. W. CAVE, and L. MEGGETT.

Interrogatories propounded by the plaintiff to the defendant, A. C. Hutchinson, a resident of the parish of Orleans, in the State of Louisiana.

Interrogatory 1st. How long have you resided in the State
88 of Louisiana? Is it not true that you never resided in the county of Harris, in the State of Texas? Are you not related by marriage to Charles Morgan, now deceased? Have you not for long years been the agent and manager of Charles Morgan's interests and particularly his steamship lines at New Orleans? Have you not long been identified with the interests of Charles Morgan at New Orleans and in Texas? Was you not a member of the firm of C. A. Whitney & Co., in New Orleans? Was not said firm the agents of Charles Morgan?

Interrogatory 2nd. Do you know about the purchase by Charles Morgan of the stock of the Texas Transportation Company? Was not such stock purchased by E. W. Cave as agent of Charles Morgan? Did you not also have an agency in making such purchase of said stock? Is it not true that such purchases of stock was made for the purpose of Charles Morgan availing himself of the charter of the Texas Transportation Company to build a railroad from a point on Buffalo bayou, below the city of Houston, Texas, where Morgan's ships would ply to for the purpose of making connection with such ships and the terminus of the Central railroad at the city of Houston?

Is it not true that Charles Morgan had at the same time pur-
89 chased a controlling interest in the Houston & Texas Central Railway Company?

Interrogatory 3d. Is it not true that the organization of Texas Transportation Company about 1875 or 1876 was exclusively in the interest of Charles Morgan? Was not said transportation company's road purely an enterprise to subserve the interests of Charles Morgan, to afford him a line of communication? Was not such a road a necessity for said Charles Morgan? Is it not true that the said road was built with the funds of Charles Morgan, and paid for through the firm of C. A. Whitney & Co., of which you was a member?

Interrogatory 4th. How many shares of the stock of the Texas Transportation Company did Morgan purchase? How many did you acquire? Is it not true that you only owned one share, and was not such share placed in your name merely that you might become a director and officer of said company? Did not Charles Fowler and E. W. Cave also acquire one share each for the same purpose? Were not you and said Fowler and Cave all working for Charles Morgan and promoting his exclusive interests in all you

did in building the Texas Transportation Company's road from Houston to Clinton?

90 Interrogatory 5th. Is it not true that you and Charles Fowler and E. W. Cave were elected directors of said company for the purpose and no other of promoting the interests of Charles Morgan? Is it not true that you all were active agents of Charles Morgan, and had only the purpose to carry out his will? Is it not true that none other than Charles Morgan's agents and friends could have been elected an officer or director of said company? At the time of the first election of directors of said Texas Transportation Company, after Charles Morgan purchased its stock, *was* not you, Charles Fowler, and E. W. Cave, all and each of you, in the pay and employment of Charles Morgan? Have you not since since said company was so organized, and up to the time of Charles Morgan's death, been employed by him *and* promoting his interests, and since his death that of his estate?

Interrogatory 6th. Is it not true that you have never presided over the meetings of the directors of the Texas Transportation Company since you have been a member of that body and president of the company? Is it not true that E. W. Cave, the vice-president, has always presided over the meetings of the directory? If you say nay, then state when and how many times you have so presided.

91 Interrogatory 7th. Is it not true that you have never given the affairs of said company attention personally? What reports have you ever made to said company of its conditions? Is it not a fact that you never made any reports? Please explain why you did not make such reports.

Interrogatory 8th. Is is not a fact that you have relied at all times on the statements of E. W. Cave to inform yourself of the condition of said company?

Interrogatory 9th. What books, if any, did you cause to be kept of said company's business and daily transactions? Is is not a fact you never caused seperate books to be kept for said company to show its daily transactions as they occur-ed? If you say you did not cause books to be kept, why did you not cause them to be kept? Did you ever make any personal examination of said company's memoranda or books? Is it not a fact that you never examined into said company's affairs?

Interrogatory 10th. Is it not a fact that you have always treated said company and its affairs as the exclusive property of Charles Morgan, and that only his interest was to be promoted by your action? Is it not true that you have all the time since you have been president of said transportation company made the Morgan

92 interest your sole care? Is it not a fact that you allowed the business of said Texas Transportation Company to be merged into the business affairs of Charles Morgan?

Interrogatory 11th. Did you ever have the books of said company at your private office in New Orleans, Louisiana? Is it not a fact that you did have said books in New Orleans, Louisiana? If you say yea, then why did you so have said books there? If you say nay, then

why did Major E. W. Cave so represent to Simon Mussina during the year 1882 when said Cave was applied to to examine said books? Is it a fact that you authorized said Cave to represent to stockholders that said books were in your possession in Louisiana?

Interrogatory 12th. Did you return said books to the office of said company in Houston, Texas, from New Orleans? If yea, did Major E. W. Cave demand that you so return them?

Interrogatory 13th. Is it not a fact that in the year 1882 the plaintiff applied to you to examine said books? Did he not tell you that he preferred not to be referred to E. W. Cave? Did he not inform you that he had made repeated efforts to see the books of the
93 company and had been put off for a long period of time? Do you not know that finally E. W. Cave informed his agent that the company had no books? Is it not a fact that the books which the said company now has were made up within the past year and made for the purpose of misleading stockholders other than the Morgan interest as to the true condition of said company? Now, please explain why no books were kept of the daily transactions of said company. Please explain why you, as president, never had such books kept, and why you never made personal examinations into the affairs of said company.

Interrogatory 14th. Is it not a fact that said company made large nett earnings? Have you ever examined to know what earnings it made? Is it not a fact that you never made or caused to be made a statement of the earnings of said Texas Transportation Company to any stockholders' meeting since you have been president? Please explain why you did not. Did you ever examine the reports of said company filed with the comptroller of Texas? If nay, why did you not? Is it not a fact that such reports show not less
94 than about two hundred and thirty-five thousand dollars nett earnings up to the year 1883? What has become of such earnings? Is it not a fact they have been indiscriminately used and appropriated by other Morgan interests? Please explain why such earnings were not appropriated to pay debts of said company.

Interrogatory 15th. Is said Texas Transportation Company now a solvent concern? If nay, why not? What has become of its funds shown to have been earned?

Interrogatory 16th. Did you instruct the freight bills to be kept seperate from freights of others of the Morgan line? Is it not a fact that the principal freight said transportation company carried was freight that was carried by other of the Morgan lines, and was not seperated, but went into the sums collected for the benefit of the other Morgan lines? Is it not a fact that said Texas Transportation Company moved over its line from Houston to Clinton during the years 1878, '79, '80, '81, and '82 two hundred car-loads of freight per day of twenty tons each for which it should have collected freight? Why — such freight not collected?

95 Interrogatory 17th. Is it not a fact that Charles Fowler is treasurer of said Texas Transportation Company? Is it not true that he never receives or disburses the funds of the company? Please explain why he does not. Is it not a fact said Fowler is and

has long been agent for Charles Morgan and his interests at Galveston? Is it not a fact that E. W. Cave recieves and disburses the funds and monies earned by the transportation company in connection with said Cave's office as treasurer of the Central Railway Company? Is it not a fact that said Cave is treasurer of the Houston and Texas Central Railway Company? Is it not a fact that said Cave has since seven years been the special agent of the Morgan interest? Is it not a fact that in all his positions he is to subserve the Morgan interests?

Interrogatory 18th. Please explain why you have not given more attention to the affairs of the Texas Transportation Company. Please explain why you did not conduct its affairs on business principles, so that its stockholders might participate in its earnings.

96 Please explain why its earnings as reported have not been devoted to payment of debts.

Interrogatory 19th. Please explain why not more than half of the nett earnings of said transportation company was reported to the comptroller. Please explain why you as president of said company did not require a daily account kept of the tons of freight hauled over the road of said company. Please explain why you did not require a cash-book to be kept to show the receipts and disbursements of said company.

Interrogatory 20th. Have you answered the foregoing interrogatories of your own knowledge and without a conference or correspondence with E. W. Cave concerning the same? Is E. W. Cave or any other person, and whom, present whilst you are answering, or have you consulted him or them or either of them how you shall answer? Have you answered without evasion or mental reservation? Are you answering without the aid of written memoranda previously prepared?

W. P. HAMBLIN,
Att'y for Plaintiff.

Commission to Take Depositions.

THE STATE OF TEXAS:

97 To any clerk of a court of record having a seal or any notary public in and for the parish of Orleans, or any commissioner of deeds duly appointed under the laws of the State of Texas for the State of Louisiana, Greeting:

We hereby authorize and require you, or either of you, to summon A. C. Hutchinson, a resident of your parish, to come before you forthwith, and that you then and there carefully and fully examine him upon his oath, first to be taken before you, touching the annexed interrogatories:

1. That you reduce his answers so taken to writing in proper form, and cause the same to be subscribed and sworn to by said witness.

2. That you certify under your hand and seal of office that said answers were sworn to and subscribed before you.

3. That you seal up in an envelope the answers so taken, together with the annexed interrogatories and this commission, with your name across the seal.

4. That you endorse on the envelope the names of the parties to this suit and the name of said witness.

5. That you direct the package to the "clerk of the district court of Harris county, at Houston, Texas."

98 6. That if said package is sent by mail the postmaster or his deputy shall endorse thereon that he received it from your hands and sign his name thereto, or if you entrust it to private conveyance, as provided by the statute, you will apprize the person receiving it that it must be delivered to the clerk of this court by himself in person.

Which evidence, so taken as above, is to be used on the trial of a suit now pending in the district court of Harris county, in said State of Texas, wherein Henry Seeligson is plaintiff and the Texas Transportation Company, E. W. Cave, Charles Fowler, A. C. Hutchinson, and L. Meggett are defendants. Herein fail not, but make due return of this writ.

Witness J. Burke, Jr., clerk of the district court for the county of Harris, and the seal of said court, at office, in Houston, this 18th day of December, A. D. 1883.

J. BURKE,
Clerk of the District Court of Harris County,
By F. M. POLAND, *D'y.*

STATE OF LOUISIANA, *City of New Orleans:*

99 In accordance with the annexed commission issued out of the clerk's office of the district court of Harris county, State of Texas, under date of December 18, 1883, under the seal of said court and the hand of the clerk thereof, in the cause therein depending and undetermined between Henry Seeligson as plaintiff and the Texas Transportation Company, A. C. Hutchinson, Charles Fowler, E. W. Cave, and L. Meggett as defendants, to take the depositions of Alexander C. Hutchinson, of the city of New Orleans, upon the annexed interrogatories propounded to him by the plaintiff in said cause, I, Andrew Hero, Jr., a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified and authorized to administer oaths and to take and certify depositions, did, on this twenty-third day of February, A. D. eighteen hundred and eighty-four, call and cause to be and appear at my office in said city of New Orleans the above-named witness, Alexander C. Hutchinson, and having first duly and solemnly sworn him according to law to testify the truth, the whole truth, and nothing but the truth regard to the matters in controversy aforesaid, and to make

100 true answers to the annexed interrogatories, the said Alexander C. Hutchinson did thereupon depose and testify as follows:

To the first interrogatory said Hutchinson answered: I have resided in Louisiana twenty-six years; have never resided in Texas

nor Harris county. I am not related by marriage to Mr. Charles Morgan; have been for many years one of Mr. Morgan's agents and managers of his interests in New Orleans, including his steamship lines, and this far have been identified with his interests in Texas and New Orleans. I was a member of the firm of Chas. A. Whitney and Co., who were the agents of Mr. Charles Morgan.

2. To the second interrogatory said Hutchinson answered: Know of the purchase of the stock of the Texas Transportation Company by Mr. Morgan; do not remember the particulars of the purchase or the instructions given by him for the purchase; heard that it was purchased through Mr. Cave; had no agency myself in making the purchase. I do not know the object of Mr Morgan's purchase; suppose it was to facilitate the transportation of goods to the
101 interior of Texas in connection with his steamship lines or any other lines, and to carry freight for the public. Mr. Morgan at that time had no controlling interest in the Houston & Texas Central Railway Company, nor do I believe that he had any interest in that company at that time.

3. To the third interrogatory said Hutchinson answered: I have always understood that the Texas Transportation Company was organized in 1866, and that little or no work was accomplished until Mr. Morgan obtained a controlling interest, in 1876, when he attempted to carry out the supposed intention of the company and to aid his lines and the public generally to communicate between the points designated and to open communication with the interior of Texas. The road certainly was not a necessity for Mr. Charles Morgan, and was certainly a much greater convenience to the public than it was to him. The money for the construction of the road was furnished by Mr. Chas. Morgan exclusively, not one dollar being furnished by plaintiff, but whether from funds derived from the profits of his business in New Orleans or New York I do
102 not know, but the money was paid through C. A. Whitney & Co.

4. To the fourth interrogatory said Hutchinson answered: Do not remember how many shares of the capital stock Mr. Morgan purchased. The transfer of stock on the books of the company will show I own but one share. It was not acquired merely that I might become a director and officer of the company; do not know what object Capt. Charles Fowler and Mr. Cave may have had in acquiring their stock. I was working in good faith for the best interests of the corporation, and have no reason to suppose that Messrs. Fowler and Cave were not actuated by the same honest motives.

5. To the fifth interrogatory said Hutchinson answered: I do not believe that Messrs. Fowler and Cave and myself were elected directors solely to promote the interests of Charles Morgan. Mr. Morgan was incapable of wishing to use us as his agents for any other purpose than the best interests of the corporation, and he had known us so long and so well that had he any other desire he would have made other selections. It is probable that Mr. Morgan,
103 holding a controlling influence in the election of directors, would not select personal enemies, but, as was usual in all his

business, honest and trustworthy parties would be selected by him. Capt. Fowler and myself were acting as agents for Mr. Morgan under stated salaries; cannot say about Mr. Cave; believe that he was his agent in some special matters. I was and have been so employed.

6. To the sixth interrogatory said Hutchinson answered: I have presided over several meetings of the board, and did so whenever important business did not require my attention at other places. It is not true that the vice-president always presided, though he did so, as it was his duty, in my absence. How often I presided I cannot remember, though the minutes of the company will show.

7. To the seventh interrogatory said Hutchinson answered: It is not true that I have never given the affairs of the company my personal attention, as in every other capacity I have endeavored to do my duty faithfully and to the best of my ability. I refer to the books of the company not only to show my actions, but likewise my verbal reports to both directors' and stockholders' meetings, as the record of my actions is more definite than a statement made from memory.

104

8. To the eighth interrogatory said Hutchinson answered: It is not true that I have at all times relied upon the statements of E.W. Cave to inform myself of the condition of the company, though I have found upon examination that Mr. Cave's statements as to the condition of the company were correct and manifested great attention and knowledge of the affairs of the corporation.

9. To the ninth interrogatory said Hutchinson answered: I cannot depend upon my memory to state what books were required to be kept by the company. The books and vouchers necessary to show the transactions of the company were kept in the office of the secretary, and are still there, and now and always have been open to the inspection of the stockholders. Certainly no orders were given to conceal any of the transactions of the company from stockholders or others having a right to inspect them. I have made repeated personal examinations of the company's books and memoranda and of the general business and affairs of the company.

105

10. To the tenth interrogatory said Hutchinson answered: It is not a fact that I have always treated the said company and its affairs as the exclusive property of Charles Morgan, and that his interest alone was to be promoted by my action; it is not true that since I have been president of said company I have made the Morgan interest my sole care. I have not allowed the business of the transportation company to be merged in the business affairs of Charles Morgan.

11. To the eleventh interrogatory said Hutchinson answered: I do not remember of having had the books of the company at New Orleans. In order to examine into the affairs of the company the accounts and vouchers have been repea-dly in my hands in New Orleans for examination. I do not know what Major Cave represented; I did not authorize Major Cave to represent to any one that the books were in New Orleans. I was advised that Simon Mussina,

who claimed to own the stock in 1882, did make a thorough examination of the books and vouchers of the company to the extent
106 of his requirement, and that they were subject to his inspection.

12. To the twelfth interrogatory said Hutchinson answered: I returned all papers, vouchers, and proceedings of every kind that were submitted to me for inspection so soon as I examined them, without any demand from Major Cave or any one else.

13. To the thirteenth interrogatory said Hutchinson answered: I recieved such a letter, though I cannot recollect its contents; I do know that there appeared to be some reflections upon Mr. Cave, and, as is just and proper in all such cases, I referred it to him that he might know of the dissatisfaction, and also because he was the vice-president, and in my absence the acting president of the company. I do not recollect the contents of the letter, nor what Cave told him. The books of the company were not made up or altered in any manner within the past year or at any other time for the purpose of misleading stockholders or any other persons as to the true condition of the company. Proper books were and are kept of the company's transactions, and I have and do make personal examination into the affairs of the company.

14. To the fourteenth interrogatory said Hutchinson an-
107 swered: I have examined to ascertain what earnings the company made. I know that the company did not make large net earnings. Statements of the earnings of the said company were made at the stockholders' meetings verbally and by written reports, as appears by the minutes of the company. I was apprised of the reports made to the comptroller of Texas, but have not examined the files of his office. It was the duty of the treasurer and superintendent to make such reports, and, knowing that they were competent officers, I left — with them. If such reports on file in the comptroller's office show no less than two hundred and thirty-five thousand dollars net earnings up to the year 1883, they are incorrect. It is not true that the earnings have been used and appropriated by the Morgan interest. All earnings have been appropriated to pay operating expenses and maintenance of the road and payment of its debts.

15. To the fifteenth interrogatory said Hutchinson answered: I consider the assets and property of the road equal to its liabilities, and therefore solvent. The books of the company will show the disposition of its earnings.

16. To the sixteenth interrogatory said Hutchinson an-
108 swered: To the several questions included in this interrogatory I answer no; they are not facts; except to the last interrogatory, to which I answer that no such freights were earned, and therefore was not collected. The freights earned were collected and credited in company's accounts.

17. To the seventeenth interrogatory said Hutchinson answered: Capt. Fowler is treasurer of the company, and also agent of the company at Houston, and as such agent disburses the funds of the company. Captain Fowler was long the agent of and for Charles Morgan and

his steamship lines. He has been, since his death, the agent of said lines at Galveston. It is not true that E. W. Cave recieves or disburses the funds and monies earned by the transportation company, in connection with his office as treasurer of the Central Railway Company, or that he has ever done so; nor is it a fact that he has been the special agent for the Morgan interests, or that he holds any position to subserve the Morgan interests, except as the same may be included with the general interests of the corporations of
109 which he is an officer. If he holds any such position it is unknown to me. He is treasurer of the Houston & Texas Central Railway Company.

18. To the eighteenth interrogatory said Hutchinson answered: I have always given close attention to the affairs of the company; I have conducted them on business principles so far as I know, and as the plaintiff in this case nor Simon Mussina, when he asserted his right to the twenty shares of stock, neither advised, counselled, directed, -or made suggestions to me, and as neither of them attended the stockholders' meetings or seemed to take any interest in the affairs of the company until they supposed more than the value of their stock could be forced out of the company by a lawsuit, in the absence of their advice I have pursued that course which I thought would best promote the interests of the company and its stockholders consistent with my duty to the public. I have before stated that the earnings of the company have been directed to the maintenance of the road, its operating expenses, and the payment of its debts.

19. To the nineteenth interrogatory said Hutchinson answered:

110 I do not know or believe that any such report was made to the comptroller. All accounts necessary and proper to be kept were kept, and refer to my answer to the preceding interrogatories for answer to this.

20. To the twentieth interrogatory said Hutchinson answered: So far as I have stated facts in the foregoing answers of my own knowledge they are true; so far as I have stated them from information I believe them true, and I have conferred with Mr. Cave, who is a codefendant with me, as well as with my counsel, as to my rights as a defendant under the laws of Texas. If by the question an inference is attempted to be made that by any consultation with any one I either wished or could be induced to say anything but the truth then plaintiff, or any party so intimating, takes advantage of their position to indict a false and base slander against me; there is no one present while I am answering except the notary; I have and am answering without evasion or mental reservation or perjury of any kind, and from the best efforts of my memory and such memoranda as may serve to preserve dates and facts.

A. C. HUTCHINSON.

111 And I, Andrew Hero, Jr., notary public, as aforesaid, do further certify that the above answers were taken down under oath, as aforesaid, and reduced to writing by me in the presence of

said witness; that the aforesaid answers were by me read over to and approved by said witness, and that thereupon the above answers were sworn to and subscribed by the said witness, Alexander C. Hutchinson, before me, notary, at New Orleans, on this February 23rd, 1884.

Witness my hand and seal.

ANDREW HERO, JR., *Not. Pub.*

In District Court, Harris County.

HENRY SEELIGSON

vs.

THE TEXAS TRANSPORTATION COMPANY, A. C. HUTCHINSON, CHARLES FOWLER, E. W. CAVE, and L. MEGGETT.

Interrogatories propounded by the plaintiff to Charles Fowler, one of the defendants, a resident of Galveston county, Texas.

Interrogatory 1st. How long long have you resided in Galveston, Texas? Is it not true that since you have resided in Galveston, Texas, you have been in the employ of Charles Morgan, or
112 in the employ of companies said Morgan controlled? Is it not true that you have represented the interests of said Morgan as agent for a great number of years? Please state how many years.

Interrogatory 2nd. Is it not true that you are one of the directors of the Texas Transportation Company? Do you not have one share of stock of said company in your name? Is it not true that said share was given to you by Charles Morgan in order to enable you to be a director in said company? If you say nay, then why did you possess yourself of said share? Is it not a fact that you acquired said share in order that you might become a director in said company to promote the interest of Charles Morgan? If you say nay, then explain, if you can, why you became such director, and who solicited you to become such director? Since you became such director in said company have you not been in the employ of Charles Morgan as agent of the Morgan line?

Interrogatory 3rd. Are you not the treasurer of the Texas Transportation Company? Is it not true that you have been such treasurer ever since the year 1876? Does not said Texas Trans-
113 portation Company's book show that you are treasurer of said company?

Interrogatory 4th. In all said stockholders' meetings of said transportation company have you not represented the stock of Charles Morgan in said company? Have you not at all times in such meetings represented the interest of Charles Morgan? Is it not true that you have at all times advocated the interest of said Morgan in such meetings? Is it not a fact that you attended such meetings for the purpose of promoting the interests of Morgan and protecting them?

Interrogatory 5th. Are you not also a director of said company? Is it not true that you and Major E. W. Cave have been the only directors

of said company who were present at directors' meetings? Is it not a fact that you have at all times been the proposer of resolutions at such meetings? Who seconded such resolutions? Is it not true that all of such resolutions were for the benefit of Charles Morgan? Is it not true that E. W. Cave presided over said meetings by virtue of his office as vice-president of said company? Is it not true that you *was* the proposer of resolutions; that you seconded the same, and then that you *was* the only voter on such resolutions? If nay, did E. W. Cave vote on such resolutions?

114 Interrogatory 6th. Is it not true that said company has earned large sums of money since the year 1876 by carrying freight from Clinton to Houston? Can you tell how much. If not, why not? Did you give any bond as such treasurer? If yea, who *was* sureties on your bond? Did such sums of money come into your hands as such treasurer? If not, why not? Did you disburse such sums as such treasurer, and have you vouchers for such disbursements? If you say nay, why did you not disburse such monies? Is it not true that none of such monies came into your hands? Is it not true that you have no account kept by you of such monies?

Interrogatory 7th. Did you ever return any account or report of monies received and disbursed by you as such treasurer of said company? If nay, why did you not return such report? Who has kept the funds of said company since you have been treasurer of the same? Where are now the funds belonging to said company? Is it not a fact that you have no knowledge of the funds of said company except what you obtain from others?

115 Interrogatory 8th. When you answer the petition in this suit will you attach to your answer a statement of all sums of money received and disbursed by you as treasurer of said company? Have you a cash-book of said company kept by you during the time you have been treasurer with entries made from day to day as the business progressed? If not, why have you not such book? Who has such book?

Interrogatory 10th. Is it not a fact that you have on several occasions made sworn reports to the comptroller of Texas of large nett sums earned by said company? Did you make such reports from your own knowledge or from knowledge received from others? Is it not a fact that you never had any such sums in your possession? If you say nay, then explain why you did not have such sums. Is it not a fact that you have no such vouchers? Is it not a fact that you have depended on others for your information concerning the same?

Interrogatory 11th. Did you ever make any personal examination of the fiscal affairs of said company; if not, then why not? How did you make statements and reports under oath to the comp-

116 troller of public accounts without such examination?

Interrogatory 12th. Do you know anything of a note in favor of Charles Morgan for the sum of $335,000, dated April 8th, 1878, due 12 months after date, bearing ten per cent. interest per annum from date, which appears to have been executed by said

Texas Transportation Company and secured by a deed of trust on all the property of said company? Is it not a fact that you represented Charles Morgan in causing said note to be executed by the said company; if nay, who did represent Charles Morgan? Why did you and those acting with you make said note due in so short a time? What prospect had said company of paying so large a note in so short a time? Why did said company promise to pay so large interest for such sum?

Interrogatory 13th. Why did not said company pay the interest on said note out of its earnings? Why was not a portion of such note paid out of the nett earnings reported by you to the comptroller? Please explain fully.

Interrogatory 14th. The minutes of said company show that on April 2ond, 1882, you *was* the mover of a resolution having
117 for its object the extension of said note. Whom did you represent when you moved said resolution? Is it not a fact that you represented Charles Morgan's estate *and* owner of said note? Is is not a fact that you held no meeting of the directory on that day? Is it not a fact that you were in Galveston on that day, and did you not send said resolution to Houston to be entered on said minutes without having any formal meeting? Is it not a fact and is it not true that said resolution is only a pretence, and that you nor the others held no meeting on that day?

Interrogatory 15th. Is said Texas Transportation Company solvent or insolvent? Is it not true that said company is insolvent? Is it not true that it has been the purpose of yourself and the other directors to make said company *to* further the purpose of the Morgan interest?

Interrogatory 16th. Is it not true that the incomes and earnings of said Texas Transportation Company are merged in other incomes of Charles Morgan's companies? If nay, then explain why you, as treasurer, do not receive the earnings of said transporta-
118 tion company and disburse them? Is it not a fact that E. W. Cave, as the treasurer of the Houston and Texas Central Railway Company, recieves said earnings into the treasury of said Central company? Is it not true that said Cave recieves and disburses the incomes of said transportation company?

Interrogatory 17th. Is it not a fact that you and your codefendants, Hutchi ıson and Cave, have, in your actions as directors of said company, acted as the employees of Charles Morgan in his lifetime, and of his estate and heirs since his death? Were not you and said parties made directors of said company to promote that interest and none other? Have not you and they held yourselves accountable to that interest for all your actions?

Interrogatory 18th. During the year 1877, and ever since up to the year 1883, has there not been plying between Brashear City and Clinton a line of steamships carrying freight? Did not a ship arrive every day at Clinton loaded with freight? Did not a ship depart every day loaded with freight? Do not said ships —
119 600 tons burthen? Was it not often the case that two ships arrived and departed from Clinton loaded with freight? Did

not the Texas Transportation Company's cars and cars used by said company haul all of such freight from Houston to Clinton, and from Clinton to Houston, according to the direction such freight was going? Did not such freight so hauled amount to one thousand tons daily?

Interrogatory 19th. Have you answered the foregoing interrogatories from your own knowledge, and without any conference or correspondence with E. W. Cave or other person? Have you made such answers *seriatim* as propounded by the officer taking the same without first preparing your answer? Have you answered the same with evasion or mental reservation? Is any officer of said company or other person present whilst you answer; and, if so, what person?

W. P. HAMBLEN,
Att'y for Plaintiff.

Commission to Take Depositions.

The State of Texas to the clerk of the district court, judge or clerk of the county court, or any notary public in and for the county of Galveston, State of Texas, Greeting:

120 We hereby authorize and require you, or either of you, to summon Charles Fowler, a resident of your county, to come before you forthwith, and that you then and there carefully and fully examine him upon his oath, first to be taken before you, touching the annexed interrogatories:

1. That you reduce his answers so taken to writing, in proper form, and cause the same to be subscribed and sworn to by said witness.

2. That you certify, under your hand and seal of office, that said answers were sworn to and subscribed before you.

3. That you seal up in an envelope the answers so taken, together with the annexed interrogatories and this commission, with your name across the seal.

4. That you endorse on the envelope the names of the parties to this suit and the name of said witness.

5. That you direct the package to the "clerk of the district court of Harris county, at Houston, Texas."

6. That if said package is sent by mail the postmaster or his deputy shall endorse thereon that he received it from your hands, and sign his name thereto; or, if you entrust it to private
121 conveyance, as provided by the statute, you will apprize the person receiving it that it must be delivered to the clerk of this court by himself in person; which evidence so taken as above is to be used on the trial of a suit now pending in the district court of Harris county, in said State of Texas, wherein Henry Seeligson is plaintiff and the Texas Transportation Company, E. W. Cave, Charles Fowler, A. C. Hutchinson, and L. Meggett are defendants.

Herein fail not, but make due return of this writ.

Witness J. Burke, Jr., clerk of the district court for the county of

Harris, and the seal of said court, at office in Houston, this 18th day of December, 1883.

J. BURKE,
Clerk of the District Court of Harris County,
By F. M. POLAND, *D'y.*

122 UNITED STATES OF AMERICA.

STATE OF TEXAS, *County of Galveston:*

HENRY SEELIGSON
vs.
THE TEXAS TRANSPORTATION COMPANY *et al.* } No. 11363.

Suit pending in the district court of Harris county, at Houston, Texas.

In obedience to the foregoing and annexed commission Charles Fowler, the witness named therein, personally appeared before me, Wm. R. Johnson, a notary public in and for the county of Galveston, duly commissioned by the Governor of the State of Texas by letters patent, under the great seal of the State, and sworn, at my office in the city of Galveston, this 22d day of December, A. D. 1883, and having first been duly sworn, in answer to the foregoing and annexed interrogatories propounded to him, deposed as follows:

Answers of Charles Fowler.

1. To the 1st direct interrogatory he answers: I have resided in the city of Galveston since the year 1850. Yes, I have been in the employ of said Charles Morgan prior to his death, and since his death in the employ of those representing his estate, in all eighteen (18) years, and have been, first his agent, and afterwards
123 agent for those representing his estate, all that time.

2. To the 2d direct interrogatory he answers: Yes, I am one of the directory of the Texas Transportation Company and have one (1) share of stock of said company in my name, and said share of stock was so given to me. As I understand it, I became a director to promote the interests of the stockholders and I was so solicited by said stockholders to be a director of said company. Yes, I have been in the employ of Charles Morgan and his estate as agent all the time I have been a director.

3. To the 3d direct interrogatory he answers: I am the treasurer of the Texas Transportation Company and have been such treasurer, as near as I can recollect, since 1876, and the books of said transportation company do show I am the treasurer.

4. To the 4th direct interrogatory he answers: No; A. C. Hutchinson, Esq., the legal representative of the estate of Charles Morgan, and during his absence E. W. Cave, Esq., represented the interests of said estate at such meetings. I, as director of said company, advocated the interests of its stockholders at all times at its meetings.

5. To the 5th direct interrogatory he answers: I am a di-
124 rector of said company; as near as I recollect E. W. Cave and myself have been the only directors present at directors' meetings; two directors present constitute a quorum. No; I have not at all times been the proposer of resolutions at such meetings. When I offered a resolution, some other director present would second it, and such resolutions were for the benefit of the stockholders. E. W. Cave, Esq., as vice-president of said company, presided over said directors' meetings in the absence of the president. When I proposed resolutions I did not second the same, and was not the only voter on same. The other director present would vote with me on the resolution. Two directors constituted a quorum.

6. To the 6th direct interrogatory he answers: No; I cannot say said company have earned large sums of money since the year 1876; I do not believe they have. No; I cannot tell how much they have earned, for the reason that E. W. Cave, Esq., vice-president of said company, has managed the affairs of the company, he being on the ground and I being in Galveston. No; I have never given bond as such treasurer. No; the monies of said company were received and disbursed by E. W. Cave, Esq., in his capacity as vice-president. I have no such vouchers, they
125 all being in the hands of the vice-president, and I have no account kept by me of such monies.

7. To the 7th direct interrogatory he answers: No; I never made such return to the company as its treasurer, for the reason, as I have already stated, that E. W. Cave, Esq., as vice-president of said company, recieved and disbursed said monies, he being on the spot and I in Galveston. E. W. Cave, as such vice-president, is the custodian of the funds of the company, and I do rely upon his statements as to the affairs of the company.

8. To the 8th direct interrogatory he answers: I cannot attach a statement such as asked for for the reasons I have already given. I have no such book; I presume E. W. Cave, vice-president, has; I never kept such a book.

10. To the 10th direct interrogatory he answers: Yes; I have in my capacity as such treasurer signed sworn reports to the comptroller of Texas—said reports made out by the vice-president, and either sent to me here or signed by me in Houston. I signed same on the faith of their being prepared by the vice-president. I have already answered that I never recieved or disbursed any funds
126 of the company, and that I have no such vouchers as E. W. Cave, the vice-president, received and disbursed for the company.

11. To the 11th direct interrogatory he answers: No; I have not made personal examination of the fiscal affairs of said company, for the reason that E. W. Cave, Esq., the vice-president, being on the spot, recieved and disbursed the monies, and the statements to the comptroller were prepared by Mr. Cave.

12. To the 12th direct interrogatory he answers: Yes; I know of such note, and that it was secured, as stated, on the property of the company. I did not represent Mr. Morgan in the execution of said

papers. A. C. Hutchinson was and is the legal representative of the estate of Charles Morgan, deceased. I do not recollect why the note was made payable in twelve (12) months and that it drew ten (10) per cent., nor the prospects of its payment in that time.

13. To the 13th direct interrogatory he answers: As I did not and do not manage the affairs of said company, I cannot answer this question.

14. To the 14th direct interrogatory he answers: I do not remember that I made such a resolution, though I may have done so as a director of said company. If said minute-book shows my
127 presence in Houston on the day mentioned, and that such meeting was held, and that I offered such a resolution, it is undoubtedly correct, as I did not send such a resolution to Houston to be entered on the minute-book, and must have been there in person.

15. To the 15th direct interrogatory he answers: I do not know whether said company is solvent or insolvent. It has been my purpose as director of said company to make said company further the interests of its stockholders.

16. To the 16th direct interrogatory he answers: The incomes and earnings and disbursements of said company are controlled and managed by E. W. Cave as vice-president of said company. He recieves and disburses same.

17. To the 17th direct interrogatory he answers: I believe, in my action as director of said company, I have acted to further the interests of the company.

18. To the 18th direct interrogatory he answers: Yes, during the year 1877 and every year since up to 1883 there has has been plying a line of steamers between Brashear City and Clinton carrying freight, but a steamer did not arrive and depart every day loaded with freight. Sometimes they would only arrive and depart
128 once a week, sometimes twice or three times. Yes; said ships are more than 600 tons burthen, and it was very seldom that two ships would arrive and depart loaded same day. The cars of the Texas Transportation Company were few in number, only about (19) nineteen as near as I remember, and the greater part of the freight to and from Houston and Clinton was transported on the cars of the Houston and Texas Central Railway Company. As I remember it, the cars of the Texas Transportation Company were barely sufficient to accom-odate the local trade of Houston. No; the amount of freight hauled did not amount to (1,000) one thousand tons daily.

19. To the 19th direct interrogatory he answers: I have answered the said interrogatories from my own knowledge, and without any conference or correspondence with E. W. Cave, or any other person. I have made the answers to each question as propounded to me by the officer taking the same, and without first preparing the same, and without evasion or mental reservation. No one else is present while I am making these my answers, excepting myself and Wm. R. Johnson, notary public for Galveston county, the officer
129 taking these my answers.

CHAS. FOWLER.

And said answers having been reduced to writing by me at the time and place aforesaid were then and there sworn to and subscribed before me by said witness, Charles Fowler.

To certify all of which I hereto subscribe my name, and affix the impress of my official seal, at my office, in the city of Galveston, this 22d day of December, 1883.

WM. R. JOHNSON,
Notary Public for Galveston County, State of Texas.

THE STATE OF TEXAS, *Harris County:*

I, James Burke, clerk of district court in and for Harris county, do hereby certify that the foregoing 134 pages contain a true copy and transcript of all the proceedings had in the cause of H. Seeligson *vs.* The Texas Transportation Company *et al.*, as same appears of record and on file in my office.

Witness my hand [and] seal of said court, May 27, A. D. 1884.

[SEAL.] J. BURKE,
Clerk Dist. C't, H. Co.,
By F. M. POLAND, *Dep'y.*

130 Endorsements: No. 181. Equity. Henry Seeligson *v.* Texas Transportation Co. *et al.* Transcript. Filed Oct. 16, 1884. C. Dart, clerk.

131 *Appearance of Counsel for Defts. Filed Oct.* 16, 1884.

In United States Circuit Court, Eastern District of Texas, November Term, 1884. In Eq.

HENRY SEELIGSON
against
THE TEXAS TRANSPORTATION CO. and Others.

C. Dart, Esq.

DEAR SIR: You will please enter my appearance as counsel for the defendants in the above cause.

T. N. WAUL,
Solicitor for Defendants.

Indorsements: No. 181. In eq. Henry Seeligson against Tex. Trans. Co. and others. Filed Oct. 16, 1884. C. Dart, clerk.

From Order-Book. Appearance of Def't Huntington.

HENRY SEELIGSON
v.
TEXAS TRANSPORTATION COMPANY *et al.* } No. 181. Equity.

Oct. rules, 1885, Oct. 16th.

In this cause, removed from the district court of Harris county, State of Texas, on this day came the defendant, C. P. Huntington,

by his counsel, T. N. Waul, and filed in this court the transcript of the record of said cause from said district court; and there-
132 upon the said T. N. Waul entered his appearance in this court as solicitor and counsel for the defendants in this suit.

Entered Oct. 16th, 1884.

Attest: C. DART,
Clerk U. S. Circ't Court, E. D. T., G.

Appearance of Defendants.

From minutes, November 3d, 1884.

HENRY SEELIGSON
v.
THE TEXAS TRANSPORTATION CO. & Others. } No. 181. Equity.

In this cause, removed into this court from the district court of Harris county, State of Texas, and in which the transcript of the record has been already filed, on this the first day of the present term came the defendants, by their counsel, T. N. Waul, and entered their appearance in this cause in this court, and, the cause being of equity cognizance, it is ordered that the same be placed upon the equity docket of this court.

Demurrer of Defendants. Filed December 1, 1884.

Circuit Court of the United States, Eastern District of Texas, Sitting in Equity at Galveston, December Rules, 1884.

133 HENRY SEELIGSON, Complainant,
against
THE TEXAS TRANSPORTATION COMPANY, A. C. HUTCHINSON, Charles Fowler, E. W. Cave, L. Meggett, and C. P. Huntington, Defendants. } Ch. 181.

The joint and several demurrer of the said defendants above named to the bill of complaint filed against them by Henry Seeligson, the above-named complainant, for cause of demurrer shew:

I. That said bill does not contain any matter of equity whereon this court can ground any decree or give to the plaintiff any relief against these defendants, or any or either of them.

II. That said bill does not show that the shares of stock in said Texas Transportation Company claimed by complainant were owned by him at the time the wrongs complained of were committed by these defendants, or either or any of them; nor is it shewn by said bill of complaint that he was a shareholder in said company at said —, nor that said shares have devolved on him since said time by operation of law.

III. That said bill shews that the twenty shares of stock in said T'x. Trans. Company — claimed by complainant by virtue of a
134 certificate of capital stock in said company, No. 105, and dated November 4th, 1882, long subsequent to the wrongs com-

plained *of* to have been committed by defendants, or either of any of them.

IV. That said bill does not set forth, if any, what efforts were made by him (said complainant) to secure such action as he desires on the part of said company or its directors or its stockholders and the cause of his failure to obtain such action.

V. That said bill of complaint does not shew that he has exhausted all the means within his power to obtain within the corporation itself the redress of his grievances or its action in conformity to his wishes, nor does — bill shew an earnest effort to obtain redress at the hands of the directors and stockholders.

VI. That said bill of complaint is not verified by the oath of complainant.

VII. That said bill of complaint does not shew that complainant or any other person made any objection to or any attempt to prevent the execution of the said note mentioned in said bill for the sum of three hundred and thirty-five thousand dollars or the mortgage thereon founded executed by this defendant, The Texas
135 Transportation Company, to the said Charles Morgan, nor that he complained of any want of power in the directors or stockholders to execute the same.

Wherefore, and for other good causes of demurrer appearing in the said bill, the defendants demur thereto and asks the judgment of this court whether they or either of them shall be compelled to make any further or other answer to the said bill, and pray to — hence dismissed with their costs and charges in this behalf most wrongfully sustained.

T. N. WAUL,
Counsel for Defendants.

I hereby certify that in my opinion the foregoing demurrer is well founded in law, as the points are therein set forth.

T. N. WAUL.

Appeared in person Charles Fowler, one of the defendants in the foregoing cause, who, being duly sworn, says that the foregoing demurrer is not interposed for delay.

CHAS. FOWLER.

Sworn to and subscribed before me this thirteenth day of November, A. D. 1884.

Witness my hand and official seal.

[SEAL.] WM. R. JOHNSON,
United States Commissioner in & for the Eastern District of Texas, at the City of Galveston.

136 Indorsements: "Ch., 181. Henry Seeligson against Texas Transportation Co. and others. Demurrer filed December 1, '84. C. Dart, clerk. Waul, counsel for def'ts."

From Order-Book, December Rules.

HENRY SEELIGSON, Complainant,
against
THE TEXAS TRANSPORTATION COMPANY and Others, Defendants.
} In Equity. No. 181.

MONDAY, *December 1st*, 1884.

On this the first day of December, one thousand eight hundred and eighty-four, being the rule day in said court, come the defendants by their solicitor, T. N. Waul, and file their demurrer to the complainant's bill of complaint in the above-stated case.

Attest: C. DART,
Clerk U. S. Circ't Court, E. D. T., G.

Order Setting Def'ts' Dem'r for Argument. Filed December 1, 1884.

HENRY SEELIGSON
vs.
TEXAS TRANSPORTATION COMPANY *et al.*
} Ch. No. 181.

December rules, December 1st, 1884.

137 And now comes the complainant and sets down for hearing on the 12th day of December, 1884, or so soon thereafter as the court will hear the same, the demurrer filed herein by defendants on December 1st, 1884, and prays that the court will pass judgment thereon & the matters of law that arise thereunder.

W. P. HAMBLEN,
Att'y for Complainant.

Indorsements: Ch. 181. Henry Seeligson *vs.* Texas Transportation Company *et al.* Filed December 1, 1884. C. Dart, clerk, by W. L. Hanscom, deputy.

From Order-Book December Rules, 1884. *Defendants' Dem'r Set Down for Argument December* 1*st*, 1884.

HENRY SEELIGSON
vs.
TEXAS TRANSPORTATION COMPANY *et al.*
} Ch. No. 181.

December rules. December 1st, 1884.

And now comes the complainant and sets down for hearing on the 12th day of December, 1884, or so soon thereafter as the court will hear the same, the demurrer filed herein by defendants on December 1st, 1884, and prays that the court will pass judgment thereon and the matters of law that arise thereunder.

138 W. P. HAMBLEN,
Att'y for Complainants.

Entered Dec'r rules, Monday, Dec'r 1st, 1884.

C. DART,
Clerk U. S. Circ't Court,
By W. L. HANSCOM, *Deputy.*

Writ to Serve Copy of Notice of Setting Def'ts' Demurrer. Filed December 2, 1884.

In U. S. Circuit Court at Galveston.

UNITED STATES OF AMERICA, *Eastern District of Texas:*

H. SEELIGSON
v.
TEXAS TRANSPORTATION COMPANY *et al.* } Ch. No. 181.

The President of the United States to the marshal of the eastern district of Texas, Greeting:

You are hereby commanded to serve the defendants (The Texas Transportation Company *et al.*) in the above-entitled cause or its counselor of record, T. N. Waul, Esq'r, with the accompanying certified copy of the notice of complainant's attorney as to the setting down for the hearing of the demurrer filed by defendant on December 12th, 1884, said demurrer filed Dec'r 1st, 1884, and duly noted on rule-book.

Herein fail not and due return of this writ make.

139 Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the circuit court of the United States for the eastern district of Texas, at Galveston, this 2d day of December, A. D. 1884.

[SEAL.] C. DART,
U. S. Circuit Court, E. D. T., G.,
By W. L. HANSCOM, *Deputy.*

Marshal's Return.

Came to hand Dec. 2, 1884, and executed same day by delivering to T. N. Waul, Esq., in person, at Galveston, the certified copy of notice as herein commanded.

J. G. TRACY, *U. S. Marshal,*
By H. H. KIRKPATRICK, *Dep'ty.*

Indorsements: "Ch. 181. H. Seeligson *v.* Tex. Transportation Co. *et al.* Writ to serve copy of notice of setting down for hearing the def'ts' demurrer. Issued Dec'r 2, 1884. C. Dart, clerk, by W. L. Hanscour, deputy. Returned & filed Dec'r 3d, 1884. C. Dart, clerk, by W. L. Hanscom, deputy."

Demurrer Heard and Submitted.

HENRY SEELIGSON
v.
TEXAS TRANSPORTATION CO. *et al.* } Ch. 181.

From minutes Dec'r 30, 1884.

This day came the parties to this suit, by their counsel, and
140 thereupon came on to be heard the defendants' demurrer to the complainant's bill, and the said demurrer being argued before the court was submitted.

On Dem'r.

HENRY SEELIGSON
v.
TEXAS TRANSPORTATION CO. *et al.* } Ch. 181.

From minutes Jan'y 5, '85.

On this day again came the parties to this suit, by their solicitors and counsel, and the court having heard further argument upon the defendants' demurrer to the complainant's bill, upon due consideration thereof, and the court being fully advised, it is considered and ordered by the court that the said demurrer be sustained as to the defendant Huntington, and overruled as to the residue of the defendants. Upon application leave is given the complainant to amend.

Complainant's Amended Bill. Filed January 5th, 1885.

In United [States] Circuit Court at Galveston. In Equity

HENRY SEELIGSON, Plaintiff,
v-rsus
TEXAS TRANSPORTATION COMPANY, E. W. CAVE, J. C. Hutchinson, Charles Fowler, L. Megget, and C. P. Huntington. } No. 181.

141 And now with leave of the court your orator comes and amends his original bill (the petition in the district court of Harris county, from whence this cause was removed) and by way of amendment alleges that the defendant, C. P. Huntington, purchased the said note of the said Charles Morgan's heirs long after said note became due, to wit, some time about the year 1880, as your orator is informed and believes, and at the time of his purchase of the same, and when the same was assigned to him by said heirs of Charles Morgan, he, the said defendant, C. P. Huntington, had full notice that the said note, dated the 8th day of April, 1878, due and payable to Charles Morgan or his order twelve months after date for the sum of three hundred and thirty-five thousand dollars, due twelve months after date, bearing ten per cent. interest per annum, was without consideration to the extent of one hundred and thirty-five thousand dollars, and that the same was fraudulent to that extent.

142 And your orator further alleges that said defendant, Huntington, as your orator is informed and believes, and from such information and belief so charges at the same time, to wit, about the year 1880 purchased from said Morgan's heirs all and singular the stock *of* that said Charles Morgan theretofore had in said Texas Transportation Company, described and set out in the original bill aforesaid, and now and has ever since held the said stock and is the owner thereof, and thereby controls said company as the said Morgan controlled the same.

And your orator further alleges that said defendant, C. P. Huntington, since he became the owner thereof, has retained as directors

and other officers of said company the defendants, Cave, Fowler, Hutchison, and L. Megget, and the same persons subserve his, the said Huntington's, interests in the same manner that they subserved the interest of said Morgan and his heirs; and petitioner alleges that the said pretended resolution of said directors as directors of said company, as charged in the original bill aforesaid, to save the said note from the statute of limitation in the year 1883,

was done and made after said Huntington had become the
143 holder of the same, but before full payment was made by said Huntington for said stock and note, and to further the interests of said Morgan's heirs and said Huntington's interest through the agency of said directors, the other defendants aforesaid.

That said Huntington had also acquired the interests the said Morgan had, as your orator is informed and believes, and from such information and belief so charges, in the Houston and Texas Central railway, and in acquiring the said stock and said note he took the place of said Morgan and his heirs to the extent as he should thereafter fulfill his contract with said heirs of said Morgan, and has acted in concert with the other defendant directors to further protect and aid the fraudulent acts of said defendant directors.

And your orator further alleges that said defendant, C. P. Huntington, well knew the said note was fraudulent to the extent aforesaid, and well knew at the time said directors so pretended to make such resolution that said note would be barred by the statute, and well knew that it is now so barred by said statute

144 And your orator further alleges that said Huntington is now, as holder of said note and stock, confederating and conspiring with the other defendants how he may defeat your orator in obtaining his just rights in said company, and depriving your orator of the large sums now due him from said company and from said directors, and approving and adopting all of the fraudulent acts of said other directors and officers of said company complained of in his original bill in this cause.

Therefore your orator prays that he may have the same relief against the defendant, C. P. Huntington, as he may be entitled to against the other defendants in this suit as prayed for in the original bill, and your orator prays for all the relief prayed for in the original bill aforesaid. And your orator will ever pray.

W. P. HAMBLEN,
Solicitor for Pl'ff.

Galveston, Jan'y 5, 1885.

Indorsements: "Ch. 181. Henry Seeligson *vs.* Texas Transportation Company *et al.* Amendment to bill. Filed Jan'y 5th, 1885. C. Dart, clerk."

145 *From Order-Book. Note of Filing Amended Bill. January 5, 1885.*

HENRY SEELIGSON
v.
TEXAS TRANSPORTATION COMPANY. } 181.

January rules, Monday, Jan'ry 5, 1885.

On this day comes the complainant, by his attorney W. P. Hamblen, and files his amendment to bill.

Entered January rules, Monday, January 5, 1885.

Attest: C. DART, *Clerk*,
By W. L. HANSCOM, *Deputy*.

Motion of Defendants to Require Complainant to Replead. Filed Feb'y 2, 1885.

Circuit Court of the United States, Eastern District of Texas, Sitting in Equity at Galveston.

HENRY SEELIGSON, Complainant,
against
THE TEXAS TRANSPORTATION COMPANY, A. C. HUTCHINSON, CHARLES Fowler, E. W. Cave, L. Meggett, and C. P. Huntington, Defendants.

February rules, 1885.

And now come the above defendants respectively and move the court that, before they, or either of them, be required to an-
146 swer, plead, or demur to said amended bill of complaint, *that* the plaintiff in said bill be ordered to replead and reform the O. bill as amended, so as to conform to the law and the rules of practice in the courts of equity in the United States, and defendants show that said O. bill as amended is in violation of the law and practice in equity in this:

I. That said — unites two distinct and several causes of action, one in seeking relief from asking to render null and void a note for $335,000.00 and the mortgage thereon founded, which is purely an equitable action, and the other a claim for dividends due on the complainant's stock, and asking a judgment for the same against the defendants, A. C. Hutchinson, Charles Fowler, and E. W. Cave, personally, for which there is a plain, adequate, and complete remedy at law, thus uniting a bill in equity to annul a mortgage and note and an action in tort for the malfeasance of some of the defendants.

II. That said O. bill and the amendment thereto are in violation of the 94th rule for the practice in courts of equity in this:
147 That complainant seeks relief against the Texas Transportation Company and the defendant Huntington, and that the note for $335,000.00 and the mortgage thereon founded, charged by complainant to be owned by said Huntington, be annulled and declared void.

1. That said claim is founded upon a right which may properly

be asserted by the corporation, and is not verified by the oath of complainant.

2. That the allegations in the petition show that complainant was not a shareholder in said company at the time of the execution of said mortgage, and that his stock was purchased from Mr. Simon Mussina on the 4th of November, 1882.

3. That said petition does not show or set forth with particularity or otherwise the efforts of the complainant to secure any action on the part of the directors or the shareholders to further his desires in that behalf.

4. That to permit the suit to be conducted in this court would be contrary to all precedents established by the courts of equity and its rules and would open wide the doors to unsworn allegations and the annoyance said rule 94 was made to prevent.

148 III. And defendants move also that said amended bill be removed from the files, as it does not meet the objections made by the court in sustaining the demurrer to the original and supplemental petition made by said Huntington, the defendant therein.

T. N. WAUL,
Sol'r for the Motion.

The clerk of the circuit court will enter the above motion on the rule and order docket at February rules, 1885.

Feb'y 2, 1885.

T. N. WAUL,
Sol'r for Motion.

Indorsements: "No. 181. Equity. Henry Seeligson against The Tex. Transp. Company and others. Filed Feb'y 2d, 1885. C. Dart, clerk. T. N. Waul for motion."

From Order-Book. Motion of Def'ts to Require Complainant to Replead, etc.

Circuit Court of the United States, Eastern District of Texas, Sitting in Equity at Galveston. February Rules, 1885.

HENRY SEELIGSON, Complainant,
against
THE TRANSPORTATION COMPANY, A. C. HUTCHINSON, CHARLES
149 Fowler, E. W. Cave, L. Meggett, and C. P. Huntington, Defendants.

February rules, Monday, February 2d, 1885.

And now come the above defendants respectively and move the court that, before they or either of them be required to answer, plead, or demur to said amended bill of complaint, *that* the plaintiff in said bill be ordered to replead and reform the O. bill as amended, so as to conform to the law and the rules of practice in the courts of equity in the United States, and defendants show that said O. bill

as amended is in violation of the law and practice in equity in this:

1. That said — unites two distinct and several causes of action, one in seeking relief from asking to render null and void a note for $335,000.00 and the mortgage thereon founded, which is purely an equitable action, and the other a claim for dividends due on the complainant's stock and asking a judgment for the same against the defendants, A. C. Hutchinson, Charles Fowler, and E. W. Cave, personally, for which there is a plain, adequate, and complete remedy at law, thus uniting a bill in equity to annul a mortgage and note and an action in tort for the malfeasance of some of the defendants.

150 II. That said O. bill and the amendment thereto are in violation of the 94th rule for the practice in courts of equity in this: That complainant seeks relief against the Texas Transportation Company and the defendant Huntington, and that the note for $335,000.00 and the mortgage thereon founded, charged by complainant to be owned by said Huntington, be annulled and declared void.

1. That said claim is founded upon a right which may properly be asserted by the corporation and is not verified by the oath of complainant.

2. That the allegations in the petition show that complainant was not a shareholder in said company at the time of the execution of said mortgage, and that his stock was purchased from Mr. Simon Mussina on the 4th of November, 1883.

3. That said petition does not show or set forth with particularity or otherwise the efforts of the complainant to secure any action on the part of the directors or the shareholders to further his desires in that behalf.

4. That to permit the suit to be conducted in this court would be contrary to all precedents established by the courts of equity

151 and its rules and would open wide the doors to unsworn allegations and the annoyance said rule 94 was made to prevent.

III. And defendants move also that said amended bill be removed from the files, as it does not meet the objections made by the court in sustaining the demurrer to the original and supplemental petition made by said Huntington, the defendant therein.

T. N. WAUL.
Sol'r for the Motion.

The clerk of the circuit court will enter the above motion on the rule and order docket at February rules, 1885.
Feb'y 2, 1885.

T. N. WAUL,
Sol'r for Motion.

Entered February rules Monday, February 2d, 1885.
Attest: C. DART,
Clerk U. S. Circuit Court, E. D. T., G.,
By W. L. HANSCOM, *Deputy.*

Motion for Order to Require Def'ts to Answer. Filed February 5, 1885.

HENRY SEELIGSON
vs.
TEXAS TRANSPORTATION Co. and Others. } No. 181. In Equity.

To the judges of the United States circuit court, sitting in equity, at Galveston:

152 Now comes Henry Seeligson, complainant in the above entitled and numbered case, and sheweth that at the last term of this honorable court, at Galveston, the demurrer filed by defendants in said cause was overruled as to the defendants A. C. Hutchinson, E. W. Cave, L. Meggett, and Charles Fowler, but no time was fixed within which the said defendants were required to file their answer to complainant's bill of complaint.

Wherefore complainant moves your honors to make an order requiring said defendants to make answer to the complainant's bill of complaint on or before some day certain to be named in said order.

W. P. HAMBLEN,
Counsel for Complainant.

Endorsements: "Ch. 181. Henry Seeligson *v.* Texas Transportation Company *et al.* Motion for order to require defendants to answer. Filed Feb'y 5th, 1885. C. Dart, clerk. Iss'd copy & writ to serve Feb'y 5, 1885. C. Dart, cl'k, by W. L. Hanscom, deputy."

From Order-Book. Note of Motion of Complainant, February 5, 1885.

HENRY SEELIGSON
vs.
TEXAS TRANSPORTATION Co. *et al.* } 181.

153 This day comes the complainant, by his solicitor, W. P. Hamblen, Esq'r., and files herein his "motion for order to require defendants to answer."

Attest:
C. DART,
Clerk U. S. Circ't Court, E. D. T., G.,
By W. L. HANSCOM, *Deputy.*

Thursday, Feb'y 5, '85.

Writ to Serve Motion for Order to Require Def'ts to Answer. Filed Feb'ry 5, 1885.

UNITED STATES OF AMERICA, } *ss:*
Eastern District of Texas,

In United States Circuit Court, at Galveston.

HENRY SEELIGSON
vs.
TEXAS TRANSPORTATION COMPANY *et al.* } No. 181. In Equity.

The President of the United States to the marshal of the eastern district of Texas, Greeting:

You are hereby commanded to serve the Texas Transportation

Company *et al.*, defendant- in the above-entitled cause, or *its* attorney of record, T. N. Waul, esquire, with the accompanying certified copy of the "motion for order to require defendants to answer" by complainant to defendants, filed February 5th, 1885. Herein fail not, and due return of this writ make.

154 Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the circuit court of the United States for the eastern district of Texas, at Galveston.

[SEAL.]

C. DART,
Clerk U. S. Circuit Court, E. D. T., G.,
By W. L. HANSCOM, *Deputy.*

Marshal's Return.

"Came to hand the 5th day of February, A. D. 1885, and I executed the same the 5th day of February, 1885, by delivering a true copy of order within specified to T. N. Waul, Esq'r., att'y of record in Galveston county, in my district at Galveston.

"J. G. TRACY, *U. S. M.,*
"By TIMM FINN, *Dept.*"

Indorsements: "Ch. 181. Henry Seelingson *v.* Texas Transportation Company *et al.* Writ to serve motion for order to require defendants to answer. Issued Feb'y 5, 1885. C. Dart, clerk, by W. L. Hanscom, deputy. Returned & filed Feb'y 6th, 1885. C. Dart, clerk."

Copy of Amended Bill Served on the Def't, C. P. Huntington, and Marshal's Return Thereon. Filed February 19th, 1885.

155 In United [States] Circuit Court at Galveston. In Equity.

HENRY SEELIGSON
versus
TEXAS TRANSPORTAITON COMPANY, E. W. CAVE, J. C. Hutchison, Charles Fowler, L. Megget, and C. P. Huntington. } No. 181.

And now, with leave of the court, your orator comes and amends his original bill (the petition in the district court of Harris county, from whence this cause was removed), and by way of amendment alleges that the defendant, C. P. Huntington, purchased the said note of the said Charles Morgan's heirs long after said note became due, to wit, some time about the year 1880, as your orator is informed and believes, and at the time of his purchase of the same and when the same was assigned to him by said heirs of Charles Morgan he, the said defendant, C. P. Huntington, had full notice that the said note dated the 8th day of April, 1878, due and payable to Charles Morgan or his order twelve months after date, for the sum of three hundred and thirty-five thousand dollars, due twelve months after date, bearing ten per cent. interest per annum, was without con-

sideration to the extent of one hundred and thirty-five thou-
156 sand dollars, and that the same was fraudulent to that extent.

And your orator further alleges that said defendant Huntington, as your orator is informed and believes, and from such information and belief so charges, at the same time, to wit, about the year 1880, purchased from said Morgan's heirs all and singular the stock *of* that said Charles Morgan theretofore had in said Texas Transportation Company described and set out in the original bill aforesaid, and now and has ever since held the said stock, and is the owner thereof, and thereby controls said company as the said Morgan controlled the same; and your orator further alleges that said defendant, C. P. Huntington, since he became the owner thereof, has retained as directors and other officers of said company the defendants, Cave, Fowler, Hutchison, and L. Megget, and the same person subserve his, the said Huntington's, interests in the same manner that they subserved the interest of said Morgan and his heirs. And petitioner alleges that the said pretended resolution of said directors as directors of said company, as charged in the original bill
157 aforesaid, to save the said note from the statute of limitation in the year 1883, was done and made after said Huntington had become the holder of the same, but before full payment was made by said Huntington for said stock and note, and to further the interests of said Morgan's heirs and said Huntington's interest through the agency of said directors, the other defendants aforesaid.

That said Huntington had also acquired the interests the said Morgan had, as your orator is informed and believes, and from such information and belief so charges, in the Houston and Texas Central railway, and in acquiring the said stock and said note he took the place of said Morgan and his heirs to the extent as he should thereafter fulfill his contract with said heirs of said Morgan, and has acted in concert with the other defendant directors to further protect and aid the fraudulent acts of said defendant directors.

And your orator further alleges that said defendant, C. P. Huntington, well knew the said note was fraudulent to the extent aforesaid, and well knew at the time said directors so pretended to make such resolution that said note would be barred by the statute
158 and well knew that it is now so barred by said statute. And your orator further alleges that said Huntington is now, as holder of said note and stock, confederating and conspiring with the other defendants how he may defeat your orator in obtaining his just rights in said company and depriving your orator of the large sums now due him from said company and from said directors, and approving and adopting all of the fraudulent acts of said other directors and officers of said company complained of in his original bill in this cause.

Therefore, your orator prays that he may have the same relief against the defendant C. P. Huntington as he may be entitled to against the other defendants in this suit as prayed for in the original bill, and your orator prays for all the relief prayed for in the original bill aforesaid.

And your orator will ever pray.
Galveston, Jan'y 5, 1885.

W. P. HAMBLEN,
Solicitor for Pl'ff.

Endorsements: "Ch. 181. Henry Seeligson *vs.* Texas Transportation Company *et al.* Amendment to bill. Filed Jan'y 5, 1885. C. Dart, clerk."

159 In the Circuit Court of the United States for the Eastern District of Texas, at Galveston, Texas.

I, C. Dart, clerk of the circuit court of the United States for the eastern district of Texas, at Galveston, in the fifth circuit and district aforesaid, do hereby certify the foregoing to be a true and correct copy of amendment to bill filed January 5th, 1885, in cause No. 181 on the chancery docket of said court, entitled Henry Seeligson *vs.* Texas Transportation Company *et al.*, as the same now appears on file in my office.

To certify which witness my hand and the seal of said court, at Galveston, in said district, this the 3rd day of February, A. D. 1885.

[SEAL.] C. DART,
Clerk U. S. Circuit Court, E. D. T., at Galveston,
By W. L. HANSCOM, *Deputy.*

160 *Marshal's Return.*

"I hereby certify that on the 11th day of February, 1885, at the city of New York, in my district, I personally served the within amendment to bill upon the within-named C. P. Huntington by exhibiting to him the within original, and at the same time leaving with him a copy thereof.

"Dated 11th Feb'ry, 1885.

"JOEL B. ERHARDT,
"*United States Marshal Southern District of New York.*

"C. P. B. Entered."

Endorsements: "No. 181. Henry Seeligson *vs.* Texas Transportation Company *et al.* Copy of amendment to bill. Filed Feb'y 19, '85. C. Dart, clerk, by W. L. Hanscom, deputy. U. S. marshal's office, S. D. N. Y. Feb. 10, 1885. Received. 485."

Order of Complainant Setting Down Defendants' Motion for Argument. Filed February 20, 1885.

Circuit Court of the United States, Eastern District of Texas, Holding Sessions at Galveston. Equity.

HENRY SEELIGSON
v.
TEXAS TRANSPORTATION CO. *et al.* } No. 181.

161 And now comes the complainant in the above entitled and numbered cause, by his counsel, and sets down for argument

the motion filed by complainant Feb'y 5th, 1885, for order to require defendants therein named to answer on Monday, the 2d day of March next, at 10 o'clock a. m., or so soon thereafter as the same can be heard by the court.

Feb'y 20th, 1885.

W. P. HAMBLEN,
Solicitor for Complainant.
S. MUSSINA,
Of Counsel.

Indorsements: "181. Equity. H. Seeligson *v.* Tex. Transportation Company. Order setting down motion for argument. Filed Feb'y 20, '85. C. Dart, clerk, by W. L. Hanscom, deputy."

From Order-Book. Entry of Order Setting Def'ts' Motion for Argument Feb'y 20, '85.

Circuit Court of the United States, Eastern District of Texas, Holding Sessions at Galveston. Equity.

HENRY SEELIGSON
v.
TEXAS TRANSPORTATION CO. *et al.* } No. 181.

162 And now comes the complainant in the above entitled and numbered cause, by his counsel, and sets down for argument the motion filed by complainant Feb'y 5th, 1885, for order to require defendants therein named to answer on Monday, the 2d day of March next, at 10 o'clock a. m., or so soon thereafter as the same can be heard by the court.

Feb'y 20, 1885.

W. P. HAMBLEN,
Solicitor for Complainant.
S. MUSSINA,
Of Counsel.

Entered Friday, Feb'y 20, '85.
Attest:
C. DART,
Clerk U. S. Circ't C't, E. D. T., G.,
By W. L. HANSCOM,
Deputy.

Writ to Serve Copy of Order, &c. Issued February 20, 1885.

UNITED STATES OF AMERICA, *Eastern District of Texas.*

In United States Circuit Court, at Galveston. In Equity.

HENRY SEELIGSON
v.
TEXAS TRANSPORTATION COMPANY *et al.* } No. 181.

The President of the United States to the marshal of the eastern district of Texas, Greeting:

You are hereby commanded to serve The Texas Transportation

Company *et al.*, defendants, or *its* attorney of record, T. N.
163 Waul, Esq., with the accompanying copy of an order setting down for argument the motion filed by complainant Feb'y 5th, 1885, for order to require defendants therein named to answer on Monday, the 2d day of March next, at 10 o'clock a. m. Entered Friday, Febr'y 20th, 1885. Herein fail not, and due return of this writ make.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the circuit court of the United States for the eastern district of Texas, at Galveston, this 20th day of February, 1885.

[SEAL.]

C. DART,
Clerk U. S. Circuit Court, E. D. T., G.,
By W. L. HANSCOM,
Deputy.

Endorsements: "Ch. 181. H. Seeligson *v.* Texas Transportation Co. Writ to serve copy of order, &c. Issued Feb'y 20, 1885. C. Dart, clerk, by W. L. Hanscom, deputy. Returned and filed Feb'ry 21, 1885. C. Dart, clerk, by W. L. Hanscom, deputy."

Marshal's Return.

"Received this writ on the 20th day of February, A. D.
164 1885, and I executed the same the 21st day of February, 1885, by delivering a certified and correct copy of an order as set forth in the within writ to T. N. Waul, Esqr., att'y of record, in the city and county of Galveston, in my district, this 21st day of February, 1885, at 12.35 p. m.

"J. G. TRACY,
"*U. S. M., E. D. T.*
"By TIM FINN,
"*Deputy.*"

Order Setting Down Def'ts' Motion for Argument. Filed March 2, 1885.

Circuit Court U. S., Eastern District of Texas, at Galveston.
Equity.

H. SEELIGSON
v.
THE TEXAS TRANSPORTATION CO. *et al.* } No. 181.

And now comes the complainant in the above entitled and numbered cause, by his solicitor, and sets down for argument the motion of the defendants filed in this cause on the 2d day of Feb'y, 1885, on Wednesday, the 11th day of March, 1885, before this court, or as soon thereafter as the same can be heard by the court.

W. P. HAMBLEN, *Solicitor.*
By S. MUSSINA, *Of Counsel.*

165 Endorsements: "Ch. 181. H. Seeligson *v.* Texas Transportation Co. *et al.* Order setting down defendants' motion for argument. Filed March 2, '85. C. Dart, clerk."

From Order-Book. Entry of above Order. March 2, 1885. *Monday, March* 2*d*, 1885. *March Rules.*

Circuit Court U. S. Eastern District of Texas, at Galveston. Equity.

H. SEELIGSON
v.
THE TEXAS TRANSPORTATION CO. *et al.* } No. 181.

And now comes the complainant in the above entitled and numbered cause, by his solicitor, and sets down for argument the motion of the defendants filed in this cause on the 2d day of Feb'y, 1885, on Wednesday, the 11th day of March, 1885, before this court, or as soon thereafter as the same can be heard by this court.

WM. P. HAMBLEN, *Solicitor,*
By S. MUSSINA, *Of Counsel.*

Entered Monday, March 2d, 1885.
Attest: C. DART,
Clerk U. S. Circ't C't, E. D. T., G.,
By W. L. HANSCOM, *Deputy.*

166 *Order from Minutes. Motion of Defendants Heard and Submitted. March 6th,* 1885.

HENRY SEELIGSON
v.
TEXAS TRANSPORTATION CO. *et al.* } No. 181. Equity.

On this — came the parties to this suit, by their counsel, and thereupon came on to be heard the motion of the defendants that complainant be required to replead, etc., before defendants be required to answer, and the said motion having been argued before the court was submitted.

Order of Court on Motion of Defendants to Require Complainant to Replead, etc. March 9th, 1885.

U. S. Circuit Court E. D. Texas, at Galveston. Equity.

HENRY SEELIGSON
vs.
TEXAS TRANSPORTATION CO., *et al.* } No. 181.

In this cause submitted to the court on a motion to order complainant to replead and to take a certain amendment from the files as not properly verified, we find that the bill as originally
167 brought in the State court and removed to this court is one brought by a stockholder in a corporation against the corporation and other parties founded on rights which may be properly asserted by the corporation, and therefore that the said bill should be recast and amended and verified so as to conform to the equity rules of the Supreme Court, particularly the 94th rule, and we further find that the said bill apparently contains several causes of

action against different parties improperly joined, to wit, a suit against the Texas Transportation Company and C. P. Huntington to cancel and annul a certain note and mortgage—a suit against said Transportation Company and Hutchinson, Cave, Fowler, and Meggett, directors and agents of said Co., for a discovery and to compel an account and settlement between said company and said directors for moneys and revenues alleged to have been misappropriated, and a suit against all the defendants for a discovery and to compel said transportation company to account, and for its liquidation, if insolvent.

Considering therefore that the said bill should be recast to conform to the equity rules and that the complainant should have opportunity to determine whether he should prosecute said
168 causes of action in one bill or in different bills it is ordered that the complainant do recast and amend his bill so as to conform to the equity rules of the Supreme Court, and that in so amending and recasting his pleadings he have leave to bring two or more bills, as counsel may advise, so as to save to complainant all the causes of action contained in his original bill. If this order is not complied with by the rule day in May next the complainant's bill shall stand dismissed with costs. If complied with the defendants shall plead, answer, or demur by the June rules.

Motion to Remand by Complainant Filed May 2, 1885.

HENRY SEELIGSON, Complainant,
vs.
TEXAS TRANSPORTATION COMPANY, A. C. HUTCHINSON, E. W. Cave, L. Meggett, Charles Fowler, and C. P. Huntington, Defendants.

In Chancery. No. 181.

To the honorable the judges of the United States circuit court for the eastern district of Texas, sitting in equity at Galveston:

Now comes Henry Seeligson, compl-ant in the above num-
169 bered and entitled cause, removed from the State court on the petition of the defendant, C. P. Huntington, against the opposition of the complain-t, which opposition is set forth in the record brought up from the State court and now on file in this honorable court, and moves that said suit be remanded to said State court from which it was removed by reason that this honorable court has not jurisdisdiction thereof:

1st. Because it is not a controversy wholly between citizens of different States which can be fully determined between them.

2nd. Because the suit is not separable.

3d. Because the petition for removal does not show that the said defendant Huntington was entitled to have the suit removed, not showing in said petition any fact whereby the said suit was susceptible of division.

4th. Because said petition on its face, in stating the citizenship of the parties, shows that the suit was not removable, the right of removal being dependent on citizenship.

5th. Because it being an action for a conspiracy, where the act of each is alleged to be the act of all, it cannot be removed by part of the alleged conspirators.

6th. Because four of the five defendants hereto, who are
170 indispensable parties, have not united in the petition for removal, and in whom the necessary citizenship did not exist to give this honorable court jurisdiction.

7th. Because the affidavit of the counsel to said petition for removal is insufficient.

S. MUSSINA,
Of Counsel for Complainant.

Endorsements: "Ch. 181. Henry Seeligson *v.* Texas Transportation Co. *et al.* Motion to remand. Filed May 2, 1885. C. Dart, clerk."

Order from Minutes. Motion to Remand Overruled. May 4, 1885.

HENRY SEELIGSON
v.
TEXAS TRANSPORTATION COMPANY and Others. } Ch. 181.

On this day came the complainant, by his counsel and solicitor, and thereupon came on to be heard the motion of the complainant to remand the cause back to the district court of Harris county, State of Texas, from whence the same was removed, and the said motion having been heard and considered by the court, and the court being sufficiently advised, it is ordered that the said motion be overruled.

171 *Amendment to Original Bill of Complaint. Filed May* 4, 1885.

United States Circuit Court, Eastern District of Texas, Fifth Circuit.
Equity.

HENRY SEELIGSON
vs.
TEXAS TRANSPORTATION CO. and Others. } No. 181.

172 In the Circuit Court of the United States for the Eastern District of Texas in Fifth Circuit. Chancery.

HENRY SEELIGSON, Complainant,
vs.
TEXAS TRANSPORTATION COMPANY, A. C. HUTCHINSON, E. W. CAVE, CHAS. FOWLER, L. MEGGETT, and C. P. HUNTINGTON, Defendants.

To the judges of the circuit court of the United States for the eastern district of Texas, sitting in equity, at Galveston:

In obedience to the order of this honorable court now comes Henry Seeligson, a resident and citizen of the State of Texas, and, not waiving his objection to the jurisdiction of the court, recasts and amends his original petition filed in the State district court, and removed

therefrom by the defendant, C. P. Huntington, and files this his bill of complaint against the Texas Transportation Company, a citizen of the State of Texas, having its office in the city of Houston, in said State of Texas, against A. C. Hutchinson, residing in the city of New Orleans, and a citizen of the State of Louisiana, as president
173 and director of said Texas Transportation Company, and against E. W. Cave, residing in the city of Houston, and a citizen of the State of Texas, as vice-president and director of said Texas Transportation Company, and against Charles Fowler, residing in Galveston, and a citizen of the State of Texas, as treasurer and a director of said transportation company, and against L. Megget, residing in the city of Houston, and a citizen of the State of Texas, as secretary of said transportation company, and against C. P. Huntington, a citizen of the State of New York, named as defendants herein, and against each and every of said defendants in their individual capacity, upon each and all of whom process had been duly served previous to the removal, and this bill is brought as well for the benefit of any stockholder as will take the benefit of any decree that may be rendered herein.

Your orator, complaining, showeth unto your honors that he is informed and believes and thereupon asserts that the Texas Transportation Company is a corporation duly established by and under the laws of the State of Texas, having its office in the city of Houston, State of Texas, having the chartered right to transport, for pay, passengers, mails, and freight from the cities of Houston and Galveston, and to and from any other places in the State of Texas, and from such other countries as might thereafter have commercial relations with the State of Texas, and for that purpose might own and operate such steamships, steamboats, or other vehicles of transportation as might be necessary for the successful conducting of the business of said company, with the right to construct a railroad, to avoid such portions of Buffalo bayou as *is* difficult of navigation, to connect with the several railroads there located; that the original charter was granted A. D. 1866, was amended A. D. 1875, under which amended charter it was reorganized, the capital stock
174 not to exceed five millions of dollars, divided into shares of one hundred dollars each, the chartered term of its existence fifty years, the business to be conducted under the supervision of a board of three directors, this board to choose a president, vice-president, and treasurer from among their number, and such other officers as might be necessary to conduct its business, with the right to make by-laws, etc.

By-laws were adopted, by which regular annual meetings of the stockholders were to be called and held, and requiring three days' notice to be given of all meetings, and another that the secretary should keep regular accounts of all moneys received and disbursed.

That under said charter a railroad was constructed from Houston to Clinton, on Buffalo bayou, a distance of about nine miles, thus connecting its terminal point—Clinton—with the Houston and Texas Central railway, a corporation having an extended line of railway running into the interior of the State, and at its said terminal point

connecting with the Morgan Steamship Line from New Orleans via Galveston, in which Houston and Texas Central railway Charles Morgan (A. D. 1875) had acquired a controlling interest, and that only two hundred and eighty-two shares of the capital stock of the said Texas Transportation Company had or ever has been issued, of which stock Charles Morgan, through the agency of defendant, E. W. Cave, had acquired a majority, and that said Charles Morgan donated to A. C. Hutchinson, E. W. Cave, and Charles Fowler, defendants hereto (his salaried employees and agents), one share each, to enable them to become directors of said company, and thus equipped, holding the proxy of said Morgan, at a stockholders' meeting, elected themselves directors, and as such directors elected themselves respectively president, vice-president, and treasurer, and defendant L. Megget secretary of the said company, and that the money to construct said
175 road and improvements to commence business thereon was obtained by drafts drawn by E. W. Cave on C. A. Whitney & Co. at New Orleans, of which firm A C. Hutchinson was a member, which money is claimed to have been advanced for account of Charles Morgan, and that about A. D. 1878 E. W. Cave, whilst occupying the position of vice-president and director of said road, labored to depreciate the value of said stock, and did depreciate its value, so that he was enabled to purchase for account of Charles Morgan the entire of said stock issued, except twenty shares, which twenty shares represented one-fourteenth interest in said company, its franchise and its properties, and that at a stockholders' meeting (held without notice), there being present only A. C. Hutchinson, E. W. Cave, and Charles Fowler (all employees of Charles Morgan, as has been said), A. C. Hutchinson in the chair, E. W. Cave presented a bill of items, amounting to three hundred and thirty-five thousand dollars, for pretended expenditures made by himself for account of said Morgan, and thereupon the chair (A. C. Hutchinson) appointed said E. W. Cave and Charles Fowler a committee to examine and report upon said bill of items, and to afford the said committee an opportunity to do so took a recess of thirty minutes, at the expiration of which time the said committee reported said bill of items correct, and on the same day the president, A. C. Hutchinson, without authority, executed, in the name of the company, a note, payable to Charles Morgan, one year after date, for three hundred and thirty-five thousand dollars, bearing interest at the rate of 10 per cent. per annum until paid, and also, without authority and without consideration, in the name of said company, executed a deed of trust upon the franchise and all the property of said company, present and future, in favor of said Morgan, to secure the payment of said note.

176 Your orator further showeth that he has been informed and believes, and upon such information and belief charges, that the said defendants, directors, and officers of said company (*i. e.*, Hutchinson, Cave, and Fowler) have combined, confederated, and conspired with each other, and with C. P. Huntington and L. Megget, defendants hereto, and with others, at present unknown to

your orators, but whose names, when discovered, your orator prays that he may be at liberty herein to insert and make parties defendant, to cheat and defraud the stockholders other than Charles Morgan, up to the time of the acts hereinbefore set forth, and subsequently including said Morgan and his heirs, and that the said bill of items thus acted upon by said directors was false, and known to be false by said Cave and Hutchinson when said report was made and received; that the cost of constructing said road and other improvements did not exceed two hundred thousand dollars, and that said note for three hundred and thirty-five thousand dollars, besides being executed without authority, was fraudulent to the extent of at least one hundred and thirty-five thousand dollars; that in June, A. D. 1881, your orator became the holder of certificate No. 105 for twenty shares of the original stock of said company, and shortly thereafter had the same transferred to him on the stock-book of said company, which he still owns, and as no dividend has ever been declared your orator avers that he is entitled to an account of all the earnings and disposition of the funds of said company from the date of the issuance of the original certificate, by virtue of which he is a stockholder.

Your orator further showeth that he is informed and believes, and upon such information and belief charges, that some time early in the year 1882 your orator, by his attorney, requested E. W. Cave, as vice-president and director, to inform him where he
177 could find the books of said company, as he desired, as a stockholder, to inspect them, when said Cave replied that the regular books of the company, exhibiting the condition of its affairs, had been sent to the president, A. C. Hutchinson, at New Orleans, for his examination; whereupon a formal demand was made to produce said books—that is, to have them returned to the secretary's office, where they belonged—which he promised to do. Your orator, after having been deceived by promises from month to month for about a year, addressed a letter to A. C. Hutchinson, at New Orleans, under date 29th December, 1882, from which the following is an extract:

A. C. Hutchinson, president of the Texas Transportation Company.

DEAR SIR: As a stockholder I have a right to know as to the earnings of your company, and hope to receive something in that regard from the books at an early day, and not be referred to Mr. Cave, as has been done for the past twelve months.

Yours respectfully, H. SEELIGSON.

A full copy of said letter is hereto annexed and marked "Exhibit A," and is referred to and made part thereof. To this letter a reply was not received, but the defendant, Hutchinson, sent the same to his codefendant, E. W. Cave, at Houston, who also failed to make any response thereto.

Your orator further showeth that he is informed and believes, and upon such information and belief charges, that after waiting some time for an answer to his said letter your orator, by his attorney,

again and again called upon said Cave and formally and pressingly demanded information as to what he had to rely upon in relation to obtaining an inspection of the books, when finally said Cave stated that the fact was the company had kept no regular books; had kept no books by an inspection of which the condition
178 of the company's affairs would be exhibited, but that he was then having the secretary, L. Megget, prepare books to meet your orator's demand; but, as the entries would have to go back about seven years, it would take some time to complete them, and in the meantime your orator was referred to said Secretary Megget for information; that thereupon your orator, by his attorney, called upon Secretary Megget, who, in answer to specific inquiries, stated:

That he had been secretary of said company about seven years.

That no book of original entries, such as a cash-book or blotter or day-book, was kept by him or kept in his office, the only books of original entries being the stock-book and book of minutes; that neither A. C. Hutchinson nor Charles Fowler ever made any report to the stockholders' or directors' meetings, or filed in his office any report showing the condition of the affairs of the company; that he knew such fact by reason of his presence at each and every of said meetings, as is shown by the book of minutes, all of which is in his handwriting; that he had never prepared or aided or been consulted in the preparation of any of the reports made to the comptroller; that he had not any knowledge of the financial condition of the company, of its receipts and disbursements; that none of its funds had passed through his hands; that he had kept no account of its receipts and disbursements; that he was then, A. D. 1883, preparing some books under the instructions and supervision of Mr. Cave, but had not completed them. Subsequently, on being called upon being called upon, he stated that he had finished his work on the books, which were then open for inspection. Whereupon, on being requested to produce the book that would exhibit the receipts and disbursements of the company, the manner in which its funds had been appropriated, and by whom, he replied that he had
179 prepared no such book, and that no such book existed in his office. Your orator having thus exhausted all apparent means within his reach to obtain the desired information, and wishing to avoid the delay, expense, and annoyance attendant upon a resort to the courts, but at the same time not willing tamely to submit to a most flagrant wrong being practiced upon him, determined to go before the State Legislature, then in session, at Austin, which action was prompted by the message of Governor Ireland to the Eighteenth Legislature, from which the following is an extract:

"Experience had demonstrated that some especially one charged with the duty of seeing that these institutions (corporations) perform their duty to the people is the only safe mode of protection. Persons of small capital cannot, and will not, contend for their rights when withheld by these corporations, and I therefore recommend that commissioners be appointed to examine and see that they faithfully report," etc. The memorial was introduced in the Senate by the Hon. Asa Stratton and referred to the Committee on the Judi-

ciary. The memorialist charged that the fraudulent doings of said transportation company, acting through the defendants hereto, Hutchinson, Cave, and Fowler, and sole representatives of said company, showed the necessity of such an enactment as the Governor recommended, as this company had rendered false reports to the comptroller and failed to keep any books, as the law required, whereby the said reports might be tested, and other acts of malfeasance and misfeasance, to which might have been added that the said alleged unfaithful officers, A. C. Hutchinson and E. W. Cave, were president and treasurer and directors of the Houston and Texas Central railway, whose values approximated twenty millions of dollars and who do not make reports to the comptroller in conformity with law, wherein the State, as well as stockholders, were
180 deeply interested, and your orator informed said Hutchinson of his said action by a letter dated March 3, 1883, a copy of which is hereunto annexed and marked "Exhibit B."

That the said E. W. Cave was present at Austin during most of the session of said Legislature strenuously laboring to prevent any action upon the measure recommended by the Governor, and also to prevent any action being taken upon said memorial. Your orator regrets that he is unable to annex hereto a copy of said memorial, but a copy had not been retained, and when the original was called for, in order to obtain a copy, the memorial had mysteriously disappeared from the files of the Senate and could not be found after most diligent search.

Your orator further showeth that he is informed and believes, and upon such information and belief charges, that said transportation company have made and received over three hundred and fifty thousand dollars net earnings, and that although the company's reports to the comptroller were false in that the statement of large amounts received were suppressed, nevertheless the reports made to the comptroller for the years 1877, 1878, 1879, 1880, 1881, and 1882, the time of filing the original petition, taken in connection with denial that there was any cash on hand at that time, shows over one hundred and thirty thousand dollars unaccounted for, which sum has been wrongfully appropriated by said Hutchinson and Cave to their own private use and emolument.

Your orator further showeth that he is informed and believes, and upon such information and belief charges, that the funds of said company never were placed in the custody of the recognized treasurer, Charles Fowler; that not one dollar of the funds of the company was handled by the secretary in his official capacity, and that the secretary was kept ignorant of the financial condition of
181 the company, and that false reports made to the comptroller were prepared by E. W. Cave without consulting the secretary relative thereto; that said Hutchinson and Cave, as controlling officers and directors, with fraudulent intent, failed to have any books of original entries kept showing the current business of the company, its receipts and disbursements, and since the institution of this suit the said Hutchinson and Cave, when specially questioned

thereunto, by evasive, pretended answers refused to divulge the name of the person who had received its earnings.

Your orator further showeth that he is informed and believes, and upon such information and belief alleges, that on the 18th day of December, 1882, your orator filed his petition in this suit in the State court, in conformity with the rules of practice of said State court, against the defendants hereto for substantially the same acts of fraud and embezzlement herein alleged, and that on the same day that he filed this suit, 18th December, 1882, he filed interrogatories addressed to said Hutchinson, Cave, and Fowler and obtained commissions to have their several depositions taken. Charles Fowler answered *instanter* on being called upon by the notary, without consultation with his codefendants or consulting with counsel. Both A. C. Hutchinson and E. W. Cave obtained from the notary extensions from time to time for about two months to answer, and consulted with each other and prepared their respective answers under the advice and instructions of their respective counsel. The following are extracts from said depositions:

E. W. Cave deposed as follows: "Charles Fowler, agent, has received and disbursed considerable amount of the funds and earnings of the company." Charles Fowler was one of the agents at Houston for a number of years. "I have not had charge of the finances of the Texas Transportation Company. No earnings were ever deposited with me or paid out by me. I have never received the earnings of the company."

182 The following is an extract from the deposition of A. C. Hutchinson: "Captain Fowler is treasurer of the company and also agent of the company at Houston, and as such agent disbursed the funds of the company."

The following are extracts from the deposition of Charles Fowler, in direct contradiction of the said sworn statements of said A. C. Hutchinson and E. W. Cave:

"E. W. Cave, as vice-president of said company, received and disbursed the (company's) moneys, he being on the spot and I being at Galveston. E. W. Cave is the custodian of the funds of the company; they were received and disbursed by him. The income, earnings, and disbursements are controlled and managed by E. W. Cave. I never made any return to the company as treasurer, for the reason, as I have already stated, that Cave, as vice-president, received and disbursed said moneys. I never received or disbursed any of the funds of the company. I have resided in the city of Galveston since 1848."

Your orator further showeth that he is informed and believes, and on such information and belief charges, that the quoted extracts from the depositions of said Hutchinson and Cave are wilfully false, and that the extracts from the deposition of Charles Fowler are the truth, being corroborated by the fact that there does not exist in the secretary's office a single voucher showing that said Charles Fowler, during the ten years that he was "treasurer," ever had any connection with the funds of the company.

Your orator further showeth that he is informed and believes, and

upon such information and belief charges, that said A. C. Hutchinson further deposed: "I have found upon examination that Mr. Cave's statements as to the condition of the company were correct and manifested great attention and knowledge of the affairs of the company.

183 "That the books necessary to show the transactions of the company were kept in the office of the secretary and are still there, and now and always have been open to the inspection of the stockholders; that proper books were and are kept of the company's transactions; that statements of the earnings of the said company were made at the stockholders' meetings verbally and by written reports, as appears by the minutes of the company.

"That the earnings of the company have been devoted to the maintenance of the road, its operating expenses, and the payment of its debts;" and all of which sworn statements of the defendant, A. C. Hutchinson, were wilfully false.

Your orator further showeth that he is informed and believes, and upon such information and belief charges, that said W. E. Cave deposed as follows, to wit:

"The earnings of the Texas Transportation Company were received by its regular agents properly appointed, and were paid out by them in the course of business, as usual, and claims were paid out by them on vouchers.

"Charles Fowler was one of the agents at Houston for a number of years.

"I have never received the money of the company, and, therefore, paid nothing over to the treasurer.

"The reports made by Charles Fowler are shown by the vouchers for the money received by him and are on file.

"Written reports have been made by the president to the board of directors, etc.

"The books of the company have at all times been under the supervision of the president and Charles Fowler.

"The books were prepared by the secretary, and not under my special direction and supervision.

"My answers have been made almost entirely from memory,
184 as I have not been afforded time to make an examination of the books and papers;" and all of which sworn statements of the said E. W. Cave are also wilfully false.

Your orator further showeth, on information and belief, that the deposition of Charles Fowler, in contradiction of the depositions of defendants Cave and Hutchinson, was on file and published about two months before the said Hutchinson and Cave deposed, and that they testified with knowledge of the contents of the deposition of said Charles Fowler.

Your orator further showeth that he is informed and believes, and upon said information and belief charges, that some time about the year 1880 the defendant, C. P. Huntington, contracted to purchase, or had purchased, from the heirs of Charles Morgan their interest in said Texas Transportation Company note for said $335,000, after it was due, with full knowledge that the said note was given without

consideration and without authority, giving him control, or measurable control, thereof, as also some of the stock of said company, and joined with the officers of said company, his codefendants, by endeavoring, through means of the controlling interest they thus jointly held, by collusion to validate the said fraudulent note, and by combining to sustain said officers in their making of false reports to the comptroller and concealing the true state of the affairs of the company, and thus made himself a party to all their acts and a proper party to this suit as well for discovery as relief, which party he was made February 9th, 1884, by amendment to the original petition.

Your orator further showeth that he is informed and believes, and upon such information and belief charges, that said note for $335,000 was at the time of the institution of this suit barred by the statute of limitations.

185 Your orator further showeth that when this suit was originally instituted the said Texas Transportation Company was, as it is now, under the sole, exclusive, actual, and potential control and management of the defendents hereto, A. C. Hutchinson, E. W. Cave, and Charles Fowler, as sole directors, occupying also the positions of president, vice-president, and treasurer, for which reason your orator did not request said corporation to institute this suit.

To the end therefore that the said defendants may, if they can, show why your orator shall not have the relief hereby prayed, and upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full and perfect and direct answer make to each of the several interrogatories hereinafter mentioned and set forth as, by note hereunder written, they are required to answer—that is to say:

To E. W. CAVE:

I. The following are extracts from your deposition taken in this case before its removal from the State court and contained in the record filed in this court:

"I have never received the earnings of the company. I have not had charge of the finances of the Texas Transportation Company. No earnings were ever deposited with me or paid out by me. Charles Fowler, agent at Houston, received considerable amount of the funds of the company."

The following is an extract from the deposition of said Charles Fowler, also contained in the record in this case:

"E. W. Cave, as vice-president, received and disbursed the company's moneys, he being on the spot and I being at Galveston. E. W. Cave is the custodian. The moneys of the company were received and disbursed by E. W. Cave. The moneys and disbursements of said company are controlled and managed by E. W. Cave.

I never received or disbursed any of the funds of the com-
186 pany. I never made any return to the company as its treasurer, for the reason, as I have already stated, that Cave, as vice-president, received and disbursed said moneys."

As the sworn statement of yourself and that of Charles Fowler cannot both be true, state which is the truth.

(1) "Is not the statement of Charles Fowler the truth?"

(2) Why did you say that Charles Fowler received and disbursed the funds of the company as agent; why not as treasurer?

(3) Was it not the duty of said Charles Fowler, as treasurer, to have become the custodian of the funds of said company? And

(4) Was it not your duty as an officer and director of said company to see that the moneys of the company were placed in the custody of the treasurer and that the said treasurer accounted for the same? If yea, answer whether you performed said duty.

II. The following is a further extract from your said deposition:

"Intg. 15. By whom were the earnings of the Texas Transportation Company received? With whom were they deposited? Who became the custodian of the funds of the company?

"Answer. The earnings of the Texas Transportation Company were received by its agents properly appointed. Funds were paid out by them in the course of business as usual, and claims were paid by them on vouchers. The funds in the hands of the agents were paid out when required for expenses and needed for repairs and improvements, much of which was under the charge of the agent."

Occupying the position of vice-president and director of this transportation company, charged before a public tribunal
187 with combining, confederating, and conspiring to cheat and defraud stockholders, charged with a breach of trust of a penal character, with having embezzled the funds placed in your charge, in relation to which charges you were then being examined, is not the presumption absolute that, had there existed any person other than yourself or yourself and your codefendant, A. C. Hutchinson, who had misappropriated or embezzled said funds, *that* you would have named them?

(1) State the names of said agents. Where they reside. When were they appointed? By whom appointed? When did their agency cease? Were they salaried agents? If yea, what salary? And who paid it?

III. The following is a further extract from your said deposition:

"I do not know of any surplus earnings outside of the agents." Who are these agents who have the surplus funds of the company?

IV. The following is a further extract from your said deposition:

"Interrogatory 15. Is it not true that Charles Fowler never made any report of his acts as treasurer of said transportation company?

"Answer. The reports made by Charles Fowler are shown by the vouchers of the moneys received and paid by him and are on file."

The whole of your said answer is contradicted by Charles Fowler. Now which is the truth, your answer or the answer of Charles Fowler? (1) Whether it is not true that Charles Fowler never made any report to the company of his acts as treasurer, and that there is not a voucher on file in the secretary's office showing any moneys

received or paid by him as either treasurer or agent.
188 Whether it is not true that the only official acts performed by Charles Fowler, as treasurer, were signing and verifying the reports to the comptroller. Which reports you had prepared and furnished to him.

V. The following is a further extract from your said deposition:

"Intg. 17. Is it not true that A. C. Hutchinson (president) never made any report to said Texas Transportation Company as required by law?

"Answer. Written reports have been made by the president to the board of directors when he deemed it necessary and proper according to law."

This interrogatory is repeated, and in again answering the witness will notice that he is not questioned as to when he, the president, deemed it necessary and proper, but as to whether the president did make any report.

(1) Whether it is not true that there is not on file in the office of the company any report made by A. C. Hutchinson, as president, showing the condition of the affairs of the company, and that the minutes of the proceedings of said company do not show that any such report was ever made.

The following is a further extract from your said deposition:

"Intg. 29. State whether you have answered all the foregoing interrogatories without any evasion or mental reservation.

"Answer. I have considered my answers before I gave them to the notary. My answers were made almost entirely from memory, as I had not been afforded time to make an examination of the books and papers, and my other duties and business would not permit the same in the short time allowed. The books and papers were not before me while writing my answers. I have answered without any evasion or mental reservation."

189 You were cited to appear and answer said interrogatories on the 28 December, 1882, and at your request delayed answering from time to time until March 10th, 1883, the notary, F. M. Poland, Esq., having "courteously" granted you all the extensions of time to answer that you requested.

Were not the books and papers of the company within your reach? Is it not true that, as vice-president and only resident director, the secretary's office was conducted under your supervision, and under your control and instructions, and was not the secretary's office virtually your office? If yea, then state why, with these facilities for obtaining information thus within your reach, did you answer: "Almost entirely from memory, without the books and papers being before you?"

VI. Not only occupying the official positions which you did in the Texas Transportation Company, but also at the same time occupying the position of treasurer of the Houston and Texas Central railway, whose receipts and disbursements were millions of dollars annually, of which funds you were thus the custodian—of which company your codefendant, A. C. Hutchinson, was president—

charged as you were before a legal tribunal with acting in complicity with said A. C. Hutchinson with embezzling the funds of the Texas Transportation Company, with a breach of trust of a most heinous character, of which charges, had you been innocent, the books and papers of the company, if properly kept, would have established your innocence, and yourself and your codefendant, A. C. Hutchinson, have made oath that they were properly kept; your integrity as a man and as a public officer thus impeached; your associate directors and officers charged as actors in said fraud—do you say that had you not known that said "books and
190 papers" did not refute, or tend to refute, said charges you would have "found time" to examine, or have them examined, or have had them "before you" at the time of your said examination?

VII. When you were examined as the accredited witness of the complainant, who had impeached the integrity of yourself and your codefendants, would you not have availed yourself of that unquestionable favorable apportunity to inform yourself from the "books and papers" and all other sources of any facts or circumstances that would have afforded you any relief, provided there had existed in your mind any doubt as to the truth of the charges made?

VIII. The deposition of Charles Fowler, from which quotations have been made in the foregoing interrogatories, was on file in the clerk's office at Houston, and published about two months before your deposition was taken. Did not that put you upon inquiry from every source available to you; and is it not true that with knowledge of the contents of the said deposition of Charles Fowler you made no inquiry to ascertain whether the deposition you were preparing for the notary, or the said deposition of Charles Fowler, was the truth?

IX. The following is a further extract from your said deposition: "I think the Houston agent kept a separate cash-book."

Who was this agent who kept a separate cash-book? Name him. State where such book now is. Was it not the property of the company; was not the secretary or treasurer's office the only proper place to keep the cash-book?

The following is a further extract from your said deposition:
191 "The president (A. C. Hutchinson) at all times gave a personal supervision to the affairs of the company, and I only acted in his absence from the State."

Do you now restate as the truth the said quotation from your said deposition? Is it not true that you were the only resident officer other than the secretary resident at Houston, and the only resident director at Houston?

You have stated in your said deposition, from which quotations have been made herein, that your counsel instructed you how to answer; state whether you answered in accordance with the instruction of your counsel.

To A. C. HUTCHINSON:

X. The following is an extract from your deposition taken in this suit before its removal from the State court and contained in the record before this court:

No. 9. What books, if any, did you cause to be kept of said transportation company's business, showing its daily transactions as they occurred? If you say you did not cause such books to be kept why did you not?

"Answer. I cannot depend upon my memory to state what books were required to be kept by the company. The books and vouchers necessary to show the transactions were kept in the secretary's office, and are still there."

Why did you rely upon your memory when the secretary's office was within your reach and you obtained two months' delay to answer, and, as president and director, was under your control, and you were in correspondence with your codefendant, E. W. Cave, and with counsel as to your answers to said interrogatories, and with these sources of information, which you availed yourself of, did you not know, not what books were necessary or required to be kept, but what books were kept by the company?

192 XI. The following is a further extract from your said deposition:

"Interrogatory 17. Is it not true that Charles Fowler never receives or disburses the funds of the company?

"Answer. Captain Fowler is treasurer and also agent of the company at Houston, and as such agent disburses the funds of the company."

Is your said answer the truth? Was Charles Fowler the agent of the company at Houston? Is he such agent now? If nay, how and when did his agency cease? By whom and when was said Fowler appointed agent?

XII. Are you not informed and do you not believe that Charles Fowler never resided at Houston, but that during all the time of his connection with said transportation company has been a resident citizen of Galveston, and that during all that time yourself, as agent at New Orleans of the Morgan Steamship Line, were in continuous correspondence with Charles Fowler as agent of the same steamship line at Galveston, so that you had absolute knowledge that said Fowler never was the company's agent at Houston?

XIII. Was not Charles Fowler, as treasurer, the proper custodian of the funds of the company; and was it not your duty, as president and director of said company, to have seen that the funds of the company went into the custody of its treasurer? If yea, is it not true that you did not perform that duty; that you did not see that the funds of the company went into the custody of its treasurer?

Now, in direct contradiction of your sworn answers to interrogatory 17, Charles Fowler has deposed that he never in any
193 capacity received or disbursed any of the funds of said company. An extract from the said deposition is contained in the

charging part of this bill and in foregoing interrogatory No. 1. Now state which is the truth, the depositions of yourself and E. W. Cave, which are in perfect accord in that particular, or the deposition of Charles Fowler.

XIV. E. W. Cave has deposed: That he had never received or disbursed any of the earnings of the company; that he had never had charge of its finances, which is also set forth more fully in the charging part of the bill and in interrogatory No. 1, whilst Charles Fowler deposed in the most positive manner that E. W. Cave had received and disbursed the company's moneys; that he was the custodian of its funds and controlled and managed its finances. You had been president and director of said transportation company for about eight years when you deposed as follows: "I have always given close attention to the affairs of the company; have made written and verbal reports of the state of its affairs; proper books were and are kept of the company's transactions; I have made repeated personal examination of the company's books and memoranda; the accounts and vouchers have been repeatedly in my hands in New Orleans for examination." In view of the above quotations from your deposition, can you truly say that you did not know who received and disbursed the funds of the company, and that you do not know which is the truth, the deposition of Charles Fowler or the depositions of yourself and E. W. Cave? If nay, then state which is the truth.

XV. The following is a further extract from your said deposition:

"Did you ever examine the reports of said company filed with the comptroller of Texas?

194 "Answer. I was apprised of the reports made to the comptroller of Texas, but have not examined the files of his office."

Whether it is not true that, when you made said answer, you had been apprised that the reports made to the comptroller were charged to be false; that you had received a letter from complainant, of date March 3, 1883, a copy of which is hereunto annexed, marked "Exhibit B," making the charge of the falsity of said reports and of other acts of malfeasance and misfeasance, all of which were represented in a memorial presented to the Eighteenth Legislature. Is it not a most violent presumption that yourself, occupying as you did, the offices of president and director of said transportation company, and at the same time president and director of the Houston and Texas Central railway, with its millions of value, that you would have allowed your name to remain thus connected with charges of breaches of trust and frauds of so heinous a character without examining the "books and papers" in the secretary's office to see whether or no said charges were well founded, had you not known that they were irrefutable?

XVI. The following is a further extract from said deposition:

"All earnings have been appropriated to pay operating expenses and maintenance of the road and payment of its debts."

Was that statement true when you made it? Did not the com-

pany at that time have funds on hand? If aye, who was the custodian of the funds of the company at the time you made said answer? And

(1) Do you say that your codefendant, E. W. Cave, did not wrongfull appropriate to his own private use and emolument a part of the earnings of said company?

195 XVII. Whether it is not true that you never visited the city of Houston exceeding three times in any year since you have been president of said transportation company, and that you never remained at Houston exceeding one week at any such visit. If nay, how otherwise should your visits be stated.

To CHARLES FOWLER:

XVIII. Whether it is not true that you have been for about ten years a director and nominal treasurer of the Texas Transportation Company, and that the only official acts that you performed as treasurer were the signing and verifying the several reports made by the company to the comptroller.

That you never were the custodian of or received or disbursed any of the funds or earnings of the company.

That you never made any report of your acts as treasurer for the reason that you never had handled any of its funds or earnings, and consequently had nothing to report.

That E. W. Cave had received and disbursed the earnings of the company and had the entire control and management of its finances.

That you never were the acting treasurer of said company.

XIX. Whether it is not true that after this suit was instituted and you were informed that your codefendant, E. W. Cave, had deposed that you had received and disbursed considerable of the funds of the company, you denounced said Cave as having stated a falsehood, and had correspondence with him relative thereto. And

XX. That you also denounced him for having betrayed your confidence in inducing you "innocently" to sign what had been denounced as false reports to the comptroller.

196 That when said Cave sent you the annual report to the comptroller for the year 1884 you positively refused to verify it; that correspondence followed, and that you held firm in your refusal until after the company had laid itself liable to a penalty of one thousand dollars for failing to report, of which you were informed, and you had been requested by A. C. Hutchinson to verify the same.

Is said report for 1884 true?

Is it not true that said report for 1884 was made in perfect accord with the previous reports which had been denounced false?

The defendant Cave is required to answer the interrogatories Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9. The defendant Hutchinson is required to answer the interrogatories Nos. 10, 11, 12, 13, 14, 15, 16, 17. The defendant Fowler is required to answer interrogatories Nos. 18, 19, 20.

Your orator further sheweth that he is informed and believes, and upon such information and belief charges, that his said stock has earned net dividends to the amount of twenty-five thousand dollars, which is his proper due, and prays judgment against each and all of the said defendants, officers and directors, and others, for the said sum, with interest from the date of the institution of this suit, and all costs in this behalf expended, and to all further relief to which he is entitled and the nature of the case demands.

And your orator further prays, in behalf of other stockholders, that said Hutchinson, Cave, and Fowler, as directors and officers of said transportation company, in connection with their answers to this bill and the interrogatories propounded therein, be ordered to make under oath a full and true statement of the affairs of said company, to be dealt with for the benefit of all stockholders of
197 said company who will or wish to take the benefit of any decree rendered herein and as to this honorable court may seem meet, and your orator will ever pray.

W. P. HAMBLEN,
Of Counsel for Complainant.

THE STATE OF TEXAS, *County of Duval:*

Henry Seeligson, the complainant, being duly sworn, on oath says that he has read the above bill and knows the contents thereof, and that the facts set forth therein as of his own knowledge are true and the facts therein set forth as upon the information of others he believes to be true.

HENRY SEELIGSON.

Subscribed and sworn to this 27th day of April, A. D. 1885, before the undersigned authority.

[SEAL.] J. L. VINING,
J. P. and ex-officio Notary Public in and for Duval County, Texas.

(Copy.)

EXHIBIT A.

GALVESTON, *December* 29, 1882.

A. C. Hutchinson, Esq., president of transportation Co.

DEAR SIR: I have, through my agent, S. Mussina, Esq., been for some time past trying to get a look through the books of the transportation company, of which you are president, and have been repeatedly promised the same by Mr. E. W. Cave; but, up to this time, no books have been produced or no statement claiming to come from same.

I am told that no books of the company exist, but a statement of the affairs is being prepared to meet my demand.

As a stockholder, I have a right to know as to the earnings
198 of your company, and hope to receive something in that regard from the books at an early day, and not to be referred to Mr. Cave, as has been done for the past twelve months.

Yours respectfully, H. SEELIGSON.

EXHIBIT B.

HOUSTON, TEXAS, *March* 3, 1883.

Mr. A. C. Hutchinson, president of the Texas Transportation Company.

DEAR SIR: As the former holder, and now as the agent of the assignee, of twenty shares of transportation company's stock, I have endeavored in vain to obtain a satisfactory statement of the affairs of said company.

I leave this evening for Austin. I laid over here to-day for the purpose of once more seeing Mr. Cave, in which I am disappointed. At Austin I intend to lay before the Legislature, to use the mildest term, the irregular manner in which the affairs of said company had been conducted. I am prompted to do this in order to enforce the rights I represent in that connection, and also to demonstrate to the Legislature the necessity of carrying out the recommendation of Governor Ireland, from whose message the following is an extract: "Experience has demonstrated that some one especially charged with the duty of seeing that these institutions perform their duty to the people is the only sure mode of protection. Persons of small capital cannot and will not contend for the rights when withheld by these corporations, and I therefore recommend that a commission be appointed," etc.

Now, as some of the charges I intend making are of a serious and damaging character, I trust that yourself or Mr. Cave will be present before said Legislature.

Yours respectfully, S. MUSSINA.

Indorsements: "Equity No. 181. Henry Seeligson *vs.* Texas Transportation Company and others. Amendment to original bill of complaint. Filed May 4, 1885. C. Dart, clerk."

199 *From Order-Book. Note of Filing Amended Bill.*

HENRY SEELIGSON
v.
TEXAS TRANSPORTATION COMPANY and Others. } Equity. No. 181.

May rules. Monday, May 4th, 1885.

On this the 4th day of May, 1885, being the rule day in said month, came the complainant herein, by his solicitor, and filed herein his amendment to his original bill of complaint.

Attest: C. DART,
Clerk U. S. Circuit Court, East'n Dist. Texas, at Galveston.

Demurrer of Defendants. Filed June 1, 1885.

Circuit Court of the United States, Eastern District of Texas, Sitting in Equity, at Galveston.

HENRY SEELIGSON, Complainant,
against
THE TEXAS TRANSPORTATION COMPANY, A. C. HUTCHINSON, Charles Fowler, E. W. CAVE, L. Megget, and C. P. Huntington, Defendants.
} In Eq. No. 181.

June rules, 1885.

The joint and several demurrer of the said defendants above named to the amended bill of complaint filed against them
200 by Henry Seeligson, the above-named complainant, and for cause of demurrer thereto show:

I. That said bill does not contain any matter of equity upon which this court can grant the relief sought by the complainant against these defendants, or either of them.

II. That complainant's bill is founded on rights which may be properly asserted by this defendant, the Texas Transportation Company, and complainant does not allege that he was a shareholder in said company at the time of the transactions of which he complains; nor does he allege that his said shares have devolved upon him since by operation of law; nor does the complainant set forth with particularity or otherwise any efforts made by him to secure such action as he desires by the aid of the shareholders; nor does he set forth the cause of his failure to obtain such action as is required by the practice in courts of equity and by the rules prescribed by the Supreme Court of the United States for the courts of equity.

III. That on the 9th of March, 1885, it was ordered by this honorable court, among other things, that the bill originally filed
201 by said complainant be "recast and amended and verified so as to conform to the equity rules of the Supreme Court, particularly the 94th rule."

That said bill is not so recast or amended or verified, so as to conform to the equity rules of the Supreme Court, and particularly to the 94th rule, nor does the said pretended amended bill conform to the practice of courts of equity in allowing amendments, said complainant having introduced into said amended bill allegations of matters occurring subsequent to the filing of the said original petition, which said matters are irrelevant and impertinent and in violation of the direction and intention of the said order of this honorable court, and that said complainant has introduced into said amended bill twenty numbered interrogatories, subdivided into many subdivisions, all and every one of which is based upon matters arising subsequent to the filing of the said original petition; that each and every one of said interrogatories are impertinent and

scandalous in violation of the orders of this honorable court
202 and the rules and practice of courts of equity. And the said L. Meggett, demurring for himself, in addition to the above causes in which he joins with his codefendants, says:

I. That said amended bill does not contain any matter of equity upon which this honorable court can grant the relief sought or any relief to the complainant against this defendant.

II. That said complainant has not in his said bill stated, charged, or shewn that this defendant has or pretends to have any right, title, or interest in the matters and things complained of by said amended bill, or that he has any right to call upon this defendant for a discovery of the said matters or things or either of them, or that any cause exists why this defendant may not be examined as a witness in this suit.

Wherefore these defendants ask the judgment of this honorable court whether they or either of them shall make any other or further answer to said amended bill or the matters therein contained, and prays they may be hence dismissed with their reasonable costs in this behalf most wrongfully sustained.

T. N. WAUL,
Solicitor for Defendants.

203 I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

T. N. WAUL,
Counsel for Demurrer.

Appeared in person E. W. Cave, one of the defendants in the foregoing cause, who, being duly sworn, says the foregoing demurrer is not interposed for delay.

E. W. CAVE.

Sworn to and subscribed before me this 29th day of May, A. D. 1885, by E. W. Cave, as witness my hand and official seal.

[SEAL.] C. DART,
Com'r U. S. Circ't Court, E. D. T., G.

Endorsements: "No. 181. Equity. Henry Seeligson *v.* Texas Transportation Co. and others. Demurrer of defendants. Filed June 1st, 1885. C. Dart, clerk."

From Order-Book. Note of Filing Defendants' Demurrers.

HENRY SEELIGSON, Complainant,
vs.
THE TEXAS TRANSPORTATION CO. and Others, Defendants. } In Equity. No. 181.

June rules, Monday, June 1st, 1885.

204 On this the 1st day of June, 1885, being the rule day in said month, came the defendants in said cause, The Texas

Transportation Company, A. C. Hutchinson, Charles Fowler, E. W. Cave, L. Megget, and C. P. Huntington, by their solicitor, T. N. Waul, and filed in this court in this cause their demurrer to the amended bill of complaint filed against them by Henry *Henry* Seeligson, the above-named complainant.

Attest: C. DART,
Clerk U. S. Circ't Court, E. D. T., G.,

And also on the same day came L. Megget, one of said defendants, by his said solicitor, and filed in this court in this cause his separate demurrer, in addition to the foregoing, to the said amended bill of complaint, the said demurrer in addition being included in and forming part of the same paper containing the demurrer of all said defendants, as above noted.

Attest: C. DART,
Clerk U. S. Circuit Court, E. D. T., G.

Order Setting Down Def'ts' Demurrer for Argument. Filed July 6, 1885.

In Circuit Court of the United States at Galveston. In Equity.

205 HENRY SEELIGSON *vs.* THE TEXAS TRANSPORTATION CO. *et al.* } No. 181.

And now comes the complainant in the above cause and sets down for argument the demurrer filed by defendants at the June rules to the amended and recast bill of complaint filed at the May rules, 1885, of this court on the first Monday in November, 1885, or so soon thereafter as the court can or will hear the same.

W. P. HAMBLEN,
Attorney for Complainant.

Endorsements: "181. Chancery. H. Seeligson *vs.* Texas Transportation Company *et al.* Rule setting down demurrer. Filed July 6th, 1885. C. Dart, clerk."

From Order-Book. Def'ts' Demurrers Set Down for Argument.

HENRY SEELIGSON, Complainant, *v.* THE TEXAS TRANSPORTATION CO. and Others, Defendants. } No. 181. Equity.

July rules, Monday, July 6, 1885.

On this the 6th day of July, 1885, being the rule day in said month, came the complainant in this cause, by his solicitor,
206 W. P. Hamblen, and sets down for argument the demurrers of the defendants herein filed in this cause on the rule day in June, 1885, on first Monday in Nov'r next, or so soon thereafter as the same can be heard by the court.

Attest: C. DART,
Clerk U. S. Circ't Court, E. D. T., G.

Motion of Complainant for Leave to Renew Motion to Remand. Filed Oct. 5, 1885.

WACO, TEXAS, *October* 3, 1885.

C. Dart, Esq.:

Please note on rules the enclosed motion, after filling in date of motion referred, & oblige—

Yours truly,

S. MUSSINA.

U. S. C. C., E. D, Texas, Galveston. In Chancery.

HENRY SEELIGSON, Comp't,
vs.
TEXAS TRANSPORTATION Co. *et als.*, Def'ts, } No. 181.

To the h'ble judges of the U. S. C. C., E. district of Texas:

Complainant respectfully moves for leave to renew his motion to remand the above-entitled cause to the State court for causes set forth in his motion filed May 2d, 1885—*i. e.*, want of jurisdic-
207 tion in the court—and that the same may be heard on the rule day in November.

S. MUSSINA,
Solicitor for Compl't.

Endorsements: "Ch. 181. H. Seeligson *v.* Texas Transportation Co. *et al.* Motion for leave to renew motion to remand to State court. Filed Oct. 5, 1885. C. Dart, clerk, by W. L. Hanscom, deputy.

From Order-Book. Motion of Complainant for Leave to Renew Motion to Remand.

U. S. C. C., E. D. Texas, Galveston. In Chancery.

HENRY SEELIGSON, Complainant,
vs.
TEXAS TRANSPORTATION Co. *et als.*, Def'ts. } No. 181.

Oct. rules, Monday, Oct. 5th, 1885.

To the h'ble judges of the U. S. C. C., E. District of Texas:

Complainant respectfully moves for leave to renew his motion to remand the above-entitled cause to the State court for cause set forth in his motion filed May 2d, 1885—*i. e.*, want of jurisdiction in the court—and that the same may be heard on the rule day in November.

S. MUSSINA,
Solicitor for Compl't.

Endorsements: "Ch. 181. H. Seeligson *v.* Texas Trans-
208 portation Co. *et al.* Motion for leave to renew motion to remand to State court. Filed Oct. 5, 1885. C. Dart, clerk, by W. L. Hanscom, deputy."

Entered Oct. rules, Monday, Oct. 5th, 1885.
Attest: C. DART,
Clerk U. S. Circuit Court, E. D. T., G.,
By W. L. HANSCOM, *Deputy.*

Motion of Defendants to Strike Complainant's Amended Bill from Files.
Filed October 31, 1885.

United States Circuit Court, Eastern District of Texas, at Galveston, October 31, 1885. In Equity.

HENRY SEELIGSON, Complainant,
against
THE TEXAS TRANSPORTATION COMPANY, A. C. HUTCHINSON, Charles Fowler, E. W. Cave, L. Meggett, and C. P. Huntington, Defendants. } No. 181.

And now come the above-named defendants respectively and move to have taken from the files of this honorable court the amended bill filed by complainant on May 4, 1885, and that the said cause be dismissed at the cost of complainant, because the said amended bill was not prepared and filed in compliance with the order of this honorable court made and entered on March 9th, 1885, in this:

209 I. That the said original bill has not been recast and amended and verified so as to conform to the equity rules of the Supreme Court, particularly the 94 rule, and the said order of this honorable court.

II. Said amended bill does not show by verification or in any other manner that complainant was a shareholder at the time of the execution of the note for $335,000.00 and the deed of trust thereon founded charged to be made by this defendant, The Texas Transportation Company, in favor of Charles Morgan, as complained of in the original and amended bill, nor that the said shares have since devolved upon him by operation of law.

III. Said amended bill does not show by verification or otherwise that at the time the defendant, C. P. Huntington, is charged with having purchased said note for $335,000.00 that complainant was a shareholder in said Texas Transportation Company or that the said shares had since devolved upon him by operation of law.

IV. Said amended bill does not show that the complainant or the parties through whom he claims made any attempt to prevent
210 the execution of said note or mortgage by said Texas Transportation Company, or that he made any attempt to notify any future purchasers of the illegality now charged in their execution, nor that at any time he or the parties through whom he claims applied to any director, officer, or stockholder to institute proceedings to annul said mortgage, or trust, or said note, or any part thereof.

V. Said amended bill contains and unites the several causes of action found by this honorable court in its order of March 4th, 1885, and is filed and prepared without respect to said order.

VI. Said amended bill is framed in violation and disregard of said

order of May 4, 1885; new and different allegations are therein made setting forth a different cause of action; that the statement of the bill is studiously vague, uncertain, and evasive, replete with matters occurring since the filing of the original bill and matter impertinent and scandalous, not in conformity with the practice of courts of equity, and an attempt to make the records of this court a receptacle for spite and vituperation.

VII. That the entire interrogatory part of said amended
211 bill is scandalous and impertinent, consisting of personal defamation and of matters not properly put in issue by the original or amended bill, and in no manner conducive to a discovery of the matters upon which relief is sought by the said original or amended bills.

Wherefore, inasmuch as said order of this honorable court has not been complied with, but wholly disregarded, defendants ask that said amended bill be taken from the files of this honorable court, and that the said cause be dismissed at the cost of complainant.

T. N. WAUL,
Solicitor for Def'ts.

Endorsements: "In eq. No. 181. Henry Seeligson against The Tex. Transp. Co. and others. Filed Oct. 31st, 1885. C. Dart, clerk."

From Order-Book. Entry of Motion of Def'ts to Strike Complainant's Amended Bill from Files. October 31, 1885.

United States Circuit Court, Eastern District of Texas, at Galveston.
October 31, 1885. In Equity.

HENRY SEELIGSON, Complainant,
against
212 THE TEXAS TRANSPORTATION COMPANY, A. C. Hutchinson, Charles Fowler, E. W. Cave, L. Megget, and C. P. Huntington, Defendants. } No. 181.

And now come the above-named defendants, respectively, and move to have taken from the files of this honorable court the amended bill filed by complainant on May 4, 1885, and that the said cause be dismissed at the cost of complainant, because the said amended bill was not prepared and filed in compliance with the order of this honorable court made and entered on March 9th, 1885, in this:

I. That the said original bill has not been recast and amended and verified so as to conform to the equity rules of the Supreme Court, particularly the 94 rule, and the said order of this honorable court.

II. Said amended bill does not show by verification or in any other manner that complainant was a shareholder at the time of the execution of the note for $335,000.00 and the deed of trust thereon founded, charged to be made by this defendant, The Texas Transportation Company, in favor of Charles Morgan, as complained

213 of in the original and amended bill, nor that the said shares have since devolved upon him by operation of law.

III. Said amended bill does not shew, by verification or otherwise, that at the time the defendant, C. P. Huntington, is charged with having purchased said note for $335,000.00 that complainant was a shareholder in said Texas Transportation Company, or that the said shares had since devolved upon him by operation of law.

IV. Said amended bill does not shew that the complainant, or the parties through whom he claims, made any attempt to prevent the execution of said note or mortgage by said Texas Transportation Company, or that he made any attempt to notify any future purchasers of the illegality now charged in their execution, nor that at any time he, or the parties through whom he claims, applied to any director, officer, or stockholder to institute proceedings to annul said mortgage, or trust, or said note, or any part thereof.

V. Said amended bill contains and unites the several causes of action found by this honorable court in its order of March
214 4th, 1885, and is filed and prepared without respect to said order.

VI. Said amended bill is framed in violation and disregard of said order of *May* 4, 1855; new and different allegations are therein made, setting forth a different cause of action; that the statement of the bill is studiously vague, uncertain, and evasive, replete with matters occurring since the filing of the original bill, and matter impertinent and scandalous, not in conformity with the practice of courts of equity, and an attempt to make the records of this court a receptacle for spite and vituperation.

VII. That the entire interrogatory part of said amended bill is scandalous and impertinent, consisting of personal defamation and of matters not properly put in issue by the original or amended bill, and in no manner conclusive to a discovery of the matters upon which relief is sought by the said original or amended bills.

Wherefore, inasmuch as said order of this honorable court has not been complied with, but wholly disregarded, defendants ask that said amended bill be taken from the files of this honorable
215 court and that the said cause be dismissed at the cost of complainant.

T. N. WAUL,
Solicitor for Def'ts.

Endorsements: "In Eq. No. 181. Henry Seelingson against The Tex. Transp. Co. and others. Filed Oct. 31st, 1885. C. Dart, clerk."

Entered Oct. 31st, 1885.
Attest:

C. DART,
Clerk U. S. Circ't Court, E. D. T., G.,
By W. L. HANSCOM, *Deputy.*

Motion for Leave to Renew Motion to Remand Granted and Motion to Remand Heard and Submitted November 18, 1885.

HENRY SEELIGSON
v.
THE TEXAS TRANSPORTATION COMPANY and Others. } Equity. No. 181.

Order from minutes.

This day came the parties to this suit, by their solicitors, and thereupon came on to be heard the motion of complainant for leave to renew his motion to remand this cause back to the State court, which leave being granted by the court the said motion to remand the cause was argued by counsel of the respective parties before the court and submitted.

216 *Order from Minutes. Renewed Motion to Remand Denied. Nov.* 19, 1885.

HENRY SEELIGSON
v.
THE TEXAS TRANSPORTATION COMPANY *et al.* } Ch. 181.

On this day again came the parties to this suit, by their solicitors, and the court having now duly considered the renewed motion of the complainant herein to remand the cause back to the State court, and being sufficiently advised in the premises, it is ordered by the court that the said motion be denied.

Dismissal and Discontinuance as to Def't, C. P. Huntington. Filed November 19th, 1885.

In the Circuit Court of the United States for the Eastern District of Texas, 5 C'rc't. Chancery.

HENRY SEELIGSON, Complainant,
vs.
TEXAS TRANSPORTATION COMPANY, A. C. HUTCHINSON, E. W. Cave, Charles Fowler, L. Megget, and C. P. Huntington, Defendants. } No. 181.

217 Now comes Henry Seelingson, complainant in the above entitled and numbered cause, and dismisses and discontinues the same as to C. P. Huntington, def't therein.

HENRY SEELINGSON,
By his solicitor, S. MUSSINA.

Endorsements: "Ch., 181. Henry Seeligson *vs.* Texas Transportation Company. Dismisal and discontinuance as to C. P. Huntington. Filed Nov. 19, 1885. C. Dart, clerk, by W. L. Hanscom, deputy."

Motion by Complainant to Remand to State Court. Filed November 19th, 1885.

United States Circuit Court for Eastern District of Texas.

HENRY SEELIGSON, Complainant,
v.
TEXAS TRANSPORTATION COMPANY & Others, Def'ts. } No. 181.

Now comes Henry Seeligson, complainant in the above entitled and numbered cause, and having dismissed and discontinued his suit as to the defendant, C. P. Huntington, at whose petition the said cause was removed, now moves this honorable court to remand the said cause to the State court, because this court has not
218 jurisdiction as to the remaining parties, it not being a suit between citizens of different States—the necessary citizenship not likely to give this court jurisdiction—and that said cause is not separable; all of which, with other causes, fully appearing in the record, to which reference is made.

S. MUSSINA,
Solicitor for Complainant.

Endorsements: "Ch. 181. Henry Seeligson *v.* Texas Transportation Co. *et al.* Motion by compl't to remand to State court. Filed Nov. 19, 1885. C. Dart, clerk."

Order from Minutes. Renewed Motion to Remand Argued and Submitted Nov. 20th, 1885.

HENRY SEELIGSON
vs.
THE TEXAS TRANSPORTATION CO. *et al.* } Ch. 181.

On this day again came the parties to this suit, by their solicitors, and thereupon came on to be heard the renewed motion of the complainant to remand the cause back to the State court, and the said motion having been argued by counsel before the court was submitted.

219 *Decree and Order Remanding the Cause. Filed January 9, 1886.*

In U. S. Circuit Court for the Eastern District of Texas, Holding Sessions at Galveston, Texas. Cause Pending in Equity.

HENRY SEELIGSON
v.
TEXAS TRANSPORTATION COMPANY *et al.* } No. 181.

On motion by complainant to remand, it appearing that no cause of action was in fact stated good, either in law or equity, against the non-citizen, Huntington, in the petition originally filed in the State court in this suit, or by the supplemental petition filed *there* herein, and the entire controversy otherwise set up in said petition being wholly within the exclusive jurisdiction of said State

court, the plaintiff having sought in the State court to assert a claim invalid upon its face against the defendant Huntington, although inferentially separable in its nature from the residue of the litigation embraced in his suit, yet, nevertheless, inseparably connected therewith:

Wherefore it is considered and adjudged by the court that
220 this court has not jurisdiction of this cause, and that the same be remanded back to the district court of Harris county, in the State of Texas, from whence it came.

And it further appearing to the court that this cause was removed in good faith, owing to the ambiguous nature of the cause of action as alleged in the petition, and further that the plaintiff has dismissed the suit as to the defendant Huntington, upon whose petition the same was so removed: Wherefore it is further considered and adjudged by the court that the plaintiff pay the costs of this suit in this court, including the cost of the transcript filed by the said defendant, for which execution may issue after ten days from the adjournment of this court.

It is further ordered that a copy hereof, certified by the clerk of this court, be forwarded by mail to the clerk of the district court of said Harris county, Texas, for the information of said court.

CHAUNCEY B. SABIN,
U. S. District Judge for the Eastern Dist. of Texas.

221 Endorsements: "No. 181. Equity. Henry Seeligson *vs.* Texas Transportation Co. *et al.* Decree. Filed Jan'y 9th, 1886. C. Dart, clerk."

Decree & Order Remanding Cause.

In U. S. Circuit Court for the Eastern District of Texas, Holding Sessions at Galveston, Texas. Cause Pending in Equity.

HENRY SEELIGSON
vs.
THE TEXAS TRANSPORTATION COMPANY *et al.* } No. 181.

From minutes, January 9th, 1886.

On motion by complainant to remand, it appearing that no cause of action was in fact stated good, either in law or equity, against the non-citizen, Huntington, in the petition originally filed in the State court in this suit, or by the supplemental petition filed *there* herein, and the entire controversy otherwise set up in said petition being wholly within the exclusive jurisdiction of said State court, the plaintiff having sought in the State court to assert a claim invalid upon its face against the defendant Huntington, although inferentially separable in its nature from the residue of the litigation embraced in his suit, yet nevertheless inseparably connected
222 therewith:

Wherefore it is considered and adjudged by the court that this court has not jurisdiction of this cause and that the same be re-

manded back to the district court of Harris county, in the State of Texas, from whence it came.

And it further appearing to the court that this cause was removed in good faith, owing to the ambiguous nature of the cause of action as alleged in the petition, and, further, that the plaintiff has dismissed the suit as to the defendant Huntington, upon whose petition the same was so removed:

Wherefore it is further considered and adjudged by the court that the plaintiff pay the costs of this suit in this court, including the cost of the transcript filed by the said defendant, for which execution may issue after ten days from the adjournment of this court.

It is further ordered that a copy hereof, certified by the clerk of this court, be forwarded by mail to the clerk of the district court of said Harris county, Texas, for the information of said court.

CHAUNCEY B. SABIN,
U. S. District Judge for the Eastern District of Texas.

223 *Order from Minutes Allowing Appeals January 9th*, 1886.

HENRY SEELIGSON
vs.
THE TEXAS TRANSPORTATION CO. *et al.* } Ch. 181.

Upon the rendering of the decree of the court in this cause this day remanding the cause, the complainant and defendants being present by their respective solicitors and counsel, thereupon all the defendants by their solicitor gave notice in open court and prayed an appeal from the said decree to the Supreme Court of the United States, which appeal is hereby allowed, the bond to perfect the same fixed at $500.00 and to be filed within 30 days from this date.

And thereupon the complainant, by his solicitor, gave notice in open court and prayed a cross-appeal from the said decree to the Supreme Court of the United States, which cross appeal is allowed, the bond to perfect the same fixed at $500.00 and to be filed within 30 days from this date.

224 *Bond of Defendants on Appeal. Filed January 16th*, 1886.

Know all men by these presents that we, The Texas Transportation Company, Alexander C. Hutchinson, Charles Fowler, E. W. Cave, Lockwood Meggett, Collis P. Huntington, and —— and ——, are held and firmly bound unto Henry Seeligson in the full and just sum of five hundred dollars ($500.00), to be paid to the said Henry Seeligson, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this — day of January, in the year of our Lord one thousand eight hundred and eighty-six (1886).

Whereas lately at a regular term of the circuit court of the United States for the eastern district of Texas, at Galveston, in a suit depending in said court between Henry Seeligson, complain-

ant, and the Texas Transportation Company, Alexander C. Hutchinson, Charles Fowler, E. W. Cave, Lockwood Meggett, & Collis P. Huntington, defendants, an order was made on the
225 9th day of January, 1886, and a decree was rendered against the said The Texas Transportation Company, Alexander C. Hutchinson, Charles Fowler, E. W. Cave, Lockwood Meggett, & Collis P. Huntington remanding said suit to the district court of Harris county, State of Texas, and the said The Texas Transportation Company, Alexander C. Hutchinson, Charles Fowler, E. W. Cave, Lockwood Meggett, and Collis P. Huntington having obtained an appeal in open court to reverse the order made in the aforesaid suit; and the said Henry Seeligson being present by his counsel when said appeal was granted, and having received notice in open court citing and admonishing him to be and appear at a Supreme Court of the United States, now holden at Washington, at its present term:

Now, the condition of the above obligation is such that if the said The Texas Transportation Company, Alexander C. Hutchinson, Charles Fowler, E. W. Cave, Lockwood Meggett, & Collis P. Huntington shall prosecute their appeal to effect and answer all damages and losts if they fail to make their plea good, then the above
226 obligation to be void; else to remain in full force and virtue.

TEXAS TRANSPORTATION COMPANY.

[SEAL.] Attest: L. MEGGET, *Sec'y & Seal of the Company.*

A. C. HUTCHINSON, [L. S.]

By T. N. WAUL, *Att'y.*

CHARLES FOWLER. [L. S.]

EBER W. CAVE. [L. S.]

L. MEGGET. [L. S.]

C. P. HUNTINGTON, [L. S.]

By T. N. WAUL, *Att'y.*

WM. D. CLEVELAND. [L. S.]

JOHN J. ATKINSON. [L. S.]

Sealed and delivered in presence of—
W. L. RAMSEY,
G. T. CARNES.

Approved by— CHAUNCEY B. SABIN,
U. S. District Judge for the Eastern District of Texas, at Tyler, Texas.

Jan'y 15, '86.

Oath to be Taken by Sureties.

I, W. D. Cleveland, do swear that I am worth, in my own right, at least the sum of five hundred dollars, after deducting from my property all that which is exempt by the constitution and laws of the State from forced sale and after the payment of all my debts of every description, whether individual or security debts, and
227 after satisfying all incumbrances upon my property which are known to me; that I reside in Houston county, and have

property in this State liable to execution worth five hundred dollars or more.

WM. D. CLEVELAND, *Surety.*

Sworn to and subscribed before me this the 13th day of January, A. D. 1886.

[SEAL.] A. K. TAYLOR,
U. S. Commissioner.

Oath to be Taken by Surety.

I, John J. Atkinson, do swear that I am worth in my own right at least the sum of five hundred dollars after deducting from my property all that which is exempt by the constitution and laws of the State from forced sale and after the payment of all my debts of every description, whether individual or security debts, and after satisfying all incumbrances on my property which are known to me; that I reside in Harris county, and have property in this State liable to execution worth five hundred dollars or more.

JOHN J. ATKINSON, *Surety.*

Sworn to and subscribed before me this the 13th day of January, A. D. 1886.

[SEAL.] A. K. TAYLOR,
U. S. Commissioner.

228 Endorsements: "No. 181. Equity. Henry Seeligson *v.* Texas Transportation Company *et al.* Bond of defendants on appeal. Filed Jan'y 16, 1886. C. Dart, clerk."

Appeal Bond of Complainant on Appeal. Filed Jan'y 28, 1886.

Know all men by these presents that we, Henry Seeligson and George Seeligson and Walter M. Seeligson, are held and firmly bound unto The Texas Transportation Company, Alexander C. Hutchinson, Charles Fowler, E. W. Cave, Lockwood Megget, and Collis P. Huntington in the full and just sum of five hundred dollars ($500.00), to be paid to the said The Texas Transportation Company, Alexander C. Hutchinson, Charles Fowler, E. W. Cave, Lockwood Megget, and Collis P. Huntington, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this — day of ——, in the year of our Lord one thousand eight hundred and eighty-six (1886).

Whereas lately, at a regular term of the circuit court of the United States for the eastern district of Texas, at Galveston, in a suit depending in said court, between Henry Seeligson, complainant,
229 and the Texas Transportation Company, Alexander C. Hutchinson, Charles Fowler, E. W. Cave, Lockwood Megget, and Collis P. Huntington, defendants, and order was made on the 9th day of January 1886, and a decree was rendered against the said

Henry Seeligson in part, as in said decree appears; and the said Henry Seeligson, having obtained a cross-appeal to reverse the decree in part in the aforesaid suit, and the said The Texas Transportation Company, Alexander C. Hutchinson, Charles Fowler, E. W. Cave, Lockwood Megget, and Collis P. Huntington being present, by their counsel, when said cross-appeal was granted, and having received notice in open court citing and admonishing them to be and appear at a Supreme Court of the United States, now holden at Washington, at its present term:

Now, the condition of the above obligation is such that if the said Henry Seeligson shall prosecute his cross-appeal to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

HENRY SEELIGSON. [L. S.]
G. SEELIGSON. [L. S.]

230 Sealed and delivered in presence of—
W. M. SEELIGSON. [L. S.]

Approved by— CHAUNCEY B. SABIN,
U. S. District Judge for the Eastern District of Texas, at Tyler, Texas.

Jan'y 27th, 1886.

Oath to be Taken by Sureties.

I, George Seeligson, do swear that I am worth in my own right at least the sum of five hundred dollars after deducting from my property all that which is exempt by the constitution and laws of the State from forced sale, and after the payment of all my debts of every description, whether individual or security debts, and after satisfying all incumbrances upon my property which are known to me; that I reside in Galveston county, and have property in this State liable to execution worth five hundred dollars or more.

G. SEELIGSON, *Surety.*

Sworn to and subscribed before me this the 21st day of January, A. D. 1886.

[SEAL.] WM. R. JOHNSON,
United States Commissioner in and for the Eastern District of Texas, at the City of Galveston.

231 *Oath to be Taken by Surety.*

I, Walter M. Seeligson, do swear that I am worth in my own right at least the sum of five hundred dollars after deducting from my property all that which is exempt by the constitution and laws of the State from forced sale and after the payment of all my debts of every description, whether individual or security debts, and after satisfying all incumbrances on my property which are known to

me; that I reside in Galveston county, and have property in this State liable to execution worth five hundred dollars or more.

W. M. SEELIGSON, *Surety.*

Sworn to and subscribed before me this the 21st day of January, A. D. 1886.

[SEAL.] WM. R. JOHNSON,
United States Commissioner in and for the Eastern District of Texas, at the City of Galveston.

Endorsements: "No. 181. Equity. Henry Seeligson *v.* The Texas Transportation Company *et al.* Appeal bond of complainant. Filed Jan'y 28th, 1886. C. Dart, clerk."

232 In the Circuit Court of the United States for the Eastern District of Texas, at Galveston, Texas.

I, C. Dart, clerk of the circuit court of the United States for the eastern district of Texas, at Galveston, in the fifth circuit and district aforesaid, do hereby certify the foregoing to be a true and correct copy of the record and of all proceedings in the case in cause No. 181 on the equity docket of said court, entitled Henry Seeligson, complainant, *vs.* The Texas Transportation Company and others, defendants, as the same now appears in my office.

To certify which witness my hand and the seal of said court, at Galveston, in said district, this the 30th day of January, A. D. 1886.

[Seal United States Circuit Court, Eastern District of Texas.]

C. DART,
Clerk U. S. Circuit Court E. D. T., at Galveston.

Endorsed on cover: E. Texas C. C. U. S. No. 841. The Texas Transportation Company, Alexander C. Hutchinson, *et al.*, appellants, *vs.* Henry Seeligson. Filed February 12, 1886. And No. 851. Henry Seeligson, appellant, *vs.* The Texas Transportation Company, Alexander C. Hutchinson, & *al.* Filed March 8, 1886.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1886.

THE TEXAS TRANSPORTATION COMPANY *et al.*, *Appellants,*

vs.

HENRY SEELIGSON, *Appellee.*

No. 481.

APPEAL UNDER EQ. RULE NUMBER XXXII.

BRIEF FOR APPELLANT.

STATEMENT OF THE CASE.

Henry Seeligson, the appellee, a citizen of the state of Texas, brought his suit on the 18th of December, 1883, against The Texas Transportation company, a citizen of the state of Texas, and Alexander C. Hutchinson, its president, a citizen of the state of Louisiana, E. W. Cave, vice-president, Charles Fowler, treasurer, and L. Megget, secretary, the last three, citizens of the state of Texas. Plaintiff alleged that he became a stockholder on the 4th of November, 1882, and is still a stockholder; that the said defendants, officers of the company, fraudulently conducted its affairs in the interest of one Charles Morgan, who owned

all of the shares in the company excepting twenty owned by plaintiff, the whole number of shares being two hundred and eighty-two.

That said defendants, officers, who also (excepting Megget, who was secretary) constituted the directory, executed a note for the company on the 8th of April, 1878, to Charles Morgan for the sum of $335,000, payable twelve months after date, with interest at the rate of 10% per annum; that said note was fraudulently executed, and a trust deed fraudulently given on all the property of the company to secure said note, when there was only $200,000 really due.

That shortly before the said note would have been barred by the statute of limitation the defendants, as such officers and directors, fraudulently agreed by resolution to waive the bar of the statute of limitation. That the note was transferred after it became due to some party unknown. That the said officers misappropriated the revenues of the company, failed to declare dividends or to render any account to the stockholders, and applied the funds of the company to their own use; prayed for an account, discovery, and that the note and trust deed be declared void. On the 9th of February, 1884, plaintiff filed a supplemental petition making C. P. Huntington a party defendant, alleging: "That he has discovered that C. P. Huntington is the "owner of the note described in the original petition, dated "on or about the 8th of April, 1878, payable to Charles "Morgan, due twelve months after date, for the sum of "$335,000, bearing ten per cent. interest per annum from "date, and petitioner alleges that the residence of C. P. "Huntington is unknown, but that said Huntington is tem- "porarily residing in the county of Harris, State of Texas." (Trans. p. 7.)

This is the only charge against C. P. Huntington in the supplemental or original petition. Upon the application of C. P. Huntington the case was removed into the circuit court of the United States for the Eastern District of Texas. C. P. Huntington alleging in his petition for removal that the amount in controversy was over $500.00; that he was a citizen of the state of New York, that the defendant company, Charles Fowler, C. W. Cave, L. Megget, defendants, and H. Seeligson the plaintiff, are and were citizens of the State of Texas, and that A. C. Hutchinson, defendant, is and was a citizen of the State of Louisiana.

"That there is a controversy in said suit which is wholly "between citizens of different States and which can be fully "determined between them, to-wit, a controversy between "said Seeligson, plaintiff, and your petitioner; and a contro- "versy between your petitioner on one side, and in which "the interests of the said Seeligson, plaintiff, The Texas "Transportation Company, and the other defendants, officers "of said company, is on the other side of said controversy." (Trans. pp. 13, 14.)

The case having been removed and placed upon the equity docket, a demurrer was filed to the bill for want of equity and non-conformity to Eq. Rule No. 94, regulating the practice in equity cases. (Trans. pp. 50, 51.)

On the 15th of January, 1885, after argument, the demurrer was sustained as to defendant Huntington, and overruled as the other defendants, and leave was given complainant to amend, which was complied with and amended bill filed. (Trans. p. 54.)

At February rules, 1885, the defendant filed a motion to require plaintiff to re-plead. (Trans. p. 57.)

On March 9, 1885, the motion was submitted and the

judges ordered that the bill be re-cast to conform to the Equity rules, and if the order was not complied with by the rule day in May, 1885, the bill should stand dismissed at complainant's cost. (Trans. pp. 65, 66.)

On May 2, 1885, complainant moved to remand the cause to the state court, which motion was overruled. (Trans. pp. 66, 67.)

After overruling the motion to remand, complainant filed his second amended bill. (Trans. pp. 67 to 84.)

On the rule day in June, 1885, the defendants filed a demurrer to the second amended bill, (Trans. pp. 84, 85) and the demurrer, on the 6th of July, was set down for argument by Hamblin, solicitor for plaintiff, to be considered on the first Monday in November, 1885. (Trans. p. 86.)

At the October rules L. Mussina, solicitor for the complainant, asked for leave to renew his motion to remand, for the causes assigned in his motion that was overruled on May 4, 1885. (Trans. p. 87.)

Leave being granted, the renewed motion was again argued and again denied. (Trans. p. 91.)

On October 31, 1885, defendant counsel moved to take from the files the amended bill of complaint, and dismiss the cause at complainant's costs, because the amended bill was not in compliance with the order of the court or Eq. Rule No. 94, and was impertinent, scandalous and defamatory. (Trans. pp. 89, 90.)

On the 19th of November, 1885, complainant dismissed and discontinued the case as to Huntington by his solicitor, S. Mussina, (Trans. p. 92,) and on the same day complainant moved to remand the cause to the state court, because the suit was dismissed as to Huntington, who had removed the cause. (Trans. p. 92.)

On the same day, 19th November, 1885, renewed his motion to remand the cause, on the ground that he had dismissed and discontinued the case as to C. P. Huntington, and, therefore, the court had not jurisdiction as to the remaining parties.

And on the 9th of January, 1886, the district judge made the following order:

"On motion by complainant to remand, it appearing "that no cause of action was in fact stated, good either in "law or equity, against the non-citizen, Huntington, in the "petition originally filed in the State court in this suit, or "by the supplemental petition filed *then* herein, and the en- "tire controversy otherwise set up in said petition being "wholly within the exclusive jurisdiction of said State court, "the plaintiff having sought in the State court to assert a "claim, invalid upon its face, against the defendant, Hunting- "ton, although inferentially separable in its nature from the "residue of the litigation embraced in his suit, yet, neverthe- "less, inseparably connected therewith.

"Wherefore it is considered and adjudged by the court "that this court has not jurisdiction of this cause, and that "the same be remanded back to the district court of Harris "county, in the State of Texas, from whence it came.

"And it further appearing to the court that this cause "was removed in good faith, owing to the ambiguous nature "of the cause of action as alleged in the petition, and further "that the plaintiff has dismissed the suit as to the defendant "Huntington, upon whose petition the same was so removed. "Wherefore it is further considered and adjudged by the "court that the plaintiff pay the cost of this suit in this "court, including the cost of the transcript filed by the said

"defendant, for which execution may issue after ten days from the adjournment of this court."

* * * * * * * * *

CHAUNCEY B. SABIN,
U. S. District Judge for the Eastern District of Texas.

(Trans. pp. 92, 93.)

SPECIFICATIONS OF ERROR.

That the District Judge erred in remanding the case to the State Court:

1. In finding that the Circuit Court, at the time of the removal, had no jurisdiction of the cause.

2. In deciding that the plaintiff, by dismissing as to one of the defendants, authorized the court to remand the case to the State Court.

3. That the court erred in remanding the cause instead of dismissing the bill at plaintiff's costs.

POINTS.

I.

The case was properly removed from the state court, there being a separable controversy between the plaintiff, a citizen of Texas, on one side, and Huntington, a citizen of New York, on the other side, to which the other defendants were not necessary parties—the only allegation against C. P. Huntington being that he is the owner of the note for $335,000 and the trust deed to secure the same—and the prayer on the original petition to annul and cancel the note and trust deed.

II.

There is a controversy between the defendant, C. P. Huntington, a citizen of New York, on one side, and the plaintiff and the other defendants on the other side, in which the interest of the plaintiff and the Texas Transportation Company and its officers is to annul and declare void or bar by the statute of limitations, the recovery of the debt as evidenced by the note for $335,000 and secured by the trust deed, and it is the interest of the defendant, Huntington, to have the said debt established and secured, of which claim he is charged to be the sole owner.

Harter v. Kernochan, 103 U. S. R., pp. 562, 566.
Barney v. Latham, 103 U. S. R., p. 205.
Pac. Rrd. Co. v. Ketchum, 101 U. S. R., p. 297.
Removal Cases, 100 U. S. R., p. 457.

III.

That the circuit court had jurisdiction at the time it was removed is evident upon an examination of the petition filed in the state court by plaintiff and the petition for removal by Huntington. The question of jurisdiction was considered adjudged and determined by the circuit judge on the motion awarding a re-pleader and the overruling of two motions to remand.

And being established, no act of the complainant thereafter, either by dismissing one of the parties defendant, or either of the causes of action, would authorize the court to remand, although the court should dismiss the case at the cost of complainants.

Phelps et al. v. Oaks, 117 U. S. R., 236.
Clark v. Matthewson, 12 Peters, 164.
Roberts v. Nelson, 8 Blatchford, 74.
Carrington v. Railroad, 9 Blatchford, 467.

IV.

The statute of 1875, sec. 5, gives authority to the circuit court to remand to the state court, only in two classes of cases: "When it shall appear to the satisfaction of the "court, after the suit has been brought or removed thereto, "that it does not really and substantially involve a dispute "or controversy, properly within the jurisdiction of said cir- "cuit court, or that the parties to said suit have been im- "properly or collusively made or joined for the purpose of "creating a case, cognizable, or removable under this act." Neither of which questions can arise as the circuit court had already decided and entertained jurisdiction, and the action of the plaintiff thereafter in dismissing as to Huntington, could only result in having the case dismissed and not remanded, and the action of the district judge, in deciding that "The plaintiff having sought in the state court to "assert a claim, invalid upon its face, against the defendant "Huntington, although inferentially separable in its nature "from the residue of the litigation embraced in his suit, yet, "nevertheless, inseparably connected therewith," could not reverse the decision of the circuit judge, made at a former term of the court, on the rule to re-plead. (Trans., pp. 65, 66.) And the motion to remand overruled at the same term. (Trans., pp. 66, 67.)

His Honor, the district judge, seems to be imbued with the thought that if a suit is instituted upon a claim, invalid on its face or bad on demurrer, a judge of the United States Court would have no jurisdiction over it when removed, thus construing the above section so as to authorize the court to remand any case when the claim would not justify a recovery, although the dispute or controversy should be earnestly contested between the parties.

V.

When a cause is ordered by the Circuit Court to be remanded the jurisdiction of the State Court re-attaches, and it takes its position and should be proceeded with as though no order of removal had been made.

Insurance Co. v. Francis, 52 Miss., 457.
Thatcher v. McWilliams, 47 Ga., 306.
Ex parte Insurance Company, 50 Ala., 464.

VI.

Our conclusions are, that a cause can only be remanded when the want of jurisdiction is shown to have existed at the time of the removal: When the jurisdiction of the Circuit Court has been decided to have existed at the time of the removal, the court should control the cause until a final decree. If, by any act of the complainant, the court is deprived of jurisdiction, the suit should be dismissed at complainant's cost. Should the order of the District Judge be affirmed, the result would be that the appellant, C. P. Huntington, is remanded to the State Court, not that he had illegally removed the suit, but because it was the judgment of the District Judge that the plaintiff, by entering a dismissal, as to one defendant, could remand the case to the State Court, and, by such action, re-instate the dismissed defendant to the position he occupied before the removal, and thus force him to litigate in the State Court after he had complied with the law in asserting his right to a trial in the United States Court. If this is the law, plaintiffs will not be slow to take advantage of it when they, in removal suits, discover the judgment of the court tends to a ruling adverse to their interest.

T. N. WAUL,
Counsel for Appellants.

122-519

122-519

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1886.

THE TEXAS TRANSPORTATION COMPANY *et al*, *Appellants*,
vs.
HENRY SEELIGSON, *Appellee*.
No. 841.

To MR. T. N. WAUL,
Attorney for Appellants.

Please take notice that this cause has been advanced for hearing under Rule Number XXXII and will be submitted to the court on Monday, March 28, 1887.

Respectfully,

WM. E. EARLE,
AND
W. W. BOYCE,
Attorneys for Appellee.

STATEMENT OF FACTS.

The following are the facts which are deemed material in the consideration of the case, and they are summarised for the convenience of the court.

PLAINTIFF:—HENRY SEELIGSON, Galveston, Texas.

DEFENDANTS:—TEXAS TRANSFER CO., Harris County, Texas.

CHARLES FOWLER, Galveston, Texas.
E. W. CAVE, Harris County, Texas.
L. MEGGET, Harris County, Texas.
A. C. HUTCHINSON, Louisiana, as Pres't of defendant company.

Petition filed in District Court, for Harris County, Texas, December 18, 1883, and by supplemental petition filed February 9, 1884, *C. P. Huntington*, of New York, was made a party defendant. March 31, 1884, *C. P. Huntington* filed a petition for removal, wherein he alleged, "that there is a controversy in said suit, which is wholly between citizens of different States, and which can be fully determined between them, to wit, a controversy between said Seeligson, plaintiff and your petitioner (Huntington), and a controversy between your petitioner (Huntington), on one side, and in which the interests of the said Seeligson, the Texas Transportation Company, and the other defendants, officers of said company, is on the other side of said controversy." (R., pp. 13, 14).

In the Circuit Court of the United States all of the defendants demurred and on January 5, 1885, (R., p. 50) the demurrer was sustained as to *C. P. Huntington* and overruled as to the others; and leave to amend being granted, the complainant, on same day, amended his bill. (R., p. 54).

On May 2, 1885, complainant moved to remand the cause to the State Court, which was overruled. (P. 67 of R).

On June 1, 1885, a demurrer was filed to the amended bill. (R., p. 84).

On October 5, 1885, the complainant renewed his motion to remand (R., p. 87), which, on the 19th of November, 1885, was denied. (R., p. 91).

On October 31, 1885, the defendants moved to strike

the amended bill from the files. (R., pp. 88, 89, and 90).

On November 19, 1885, the complainant discontinued as to C. P. Huntington and moved to remand the cause as to the other defendants. (R., pp. 91 and 92).

And on January 9, 1886, an order was made remanding the cause to the District Court of Harris County, in the State of Texas, in which order the court used the following language, to wit:

"On motion by complainant to remand, it appearing that no cause of action was, in fact, stated good, either in law or equity, against the non-citizen Huntington in the petition originally filed in the State Court in this suit, or by the supplemental petition filed there herein, and the entire controversy otherwise set up in said petition being wholly within the exclusive jurisdiction of said State Court, the plaintiff having sought in the State Court to assert a claim, invalid upon its face, against the defendant Huntington, although inferentially separable in its nature from the residue of the litigation embraced in his suit, yet, nevertheless, inseparably connected therewith." (R., pp. 92 and 93).

From this order remanding the cause to the State Court the defendants appealed.

It appears from the record that the only person who petitioned to remove the cause to the Circuit Court of the United States was C. P. Huntington. It also appears that the only ground upon which he based his petition for removal was that of "citizenship," alleging that there was a separable controversy between himself and Seeligson, (complainant,) the appellee, and also between himself and the complainant and other defendants. The pleadings certainly do not show that there is any ground for the last pretention; nor does it fairly appear that there was any separable controversy between the defendant, Huntington, and the complainant, Seeligson. Be that as it may, how-

ever, when the complainant discontinued as to Huntington, dismissing his bill as to him, there was no party before the Federal Court as to whom it could hold the bill for jurisdiction on the ground of citizenship, and no other ground for removal has been alleged or suggested.

That all issues of fact made upon the petition for removal must be tried in the Circuit Court of the United States is so plain from the statutes, and has so often been held by this court, it is unnecessary to do more than state the proposition. In this case the Circuit Court expressly holds in its order remanding the cause, that except as against the non-citizen Huntington, the entire controversy otherwise set up in said petition is wholly within the exclusive jurisdiction of the State Court. When, therefore, this ligament was cut by the dismissal of the bill as to Huntington, the cause was necessarily remanded to the State Court.

Hyde *vs.* Ruble, 104 U. S., 407.

Barney *vs.* Latham, 103 U. S., 205.

It will not be questioned that the Circuit Court had the power to allow the complainant to dismiss his bill as to Huntington. The record does not show that any objection was made by the appellant to this being done, and of course no objection of this nature can be made here which was not made below. Indeed the appellants demurred jointly in the Circuit Court to the amended bill, and their demurror was sustained as to Huntington.

It cannot be pretended there was any ground for hearing the case in the Circuit Court after the bill was dismissed as to Huntington. Because no one else petitioned for removal, and because there was no separable controversy.

The record discloses none, even whilst Huntington was a party, notwithstanding his petition, and none of

the parties have suggested that there was after he was eliminated.

Case of Sewing Machine Companies, 18 Wall., 553.

Blake *vs.* McKim, 103 U. S., 336.

Indeed it is a curious feature of this case that the defendants have appealed from the order remanding this case; and whilst the record has been filed for more than a year, the appellants seem indisposed to take any action towards bringing their appeal to a hearing, as they might have done under the rule.

WM. E. EARLE,
AND
W. W. BOYCE,
Attorneys for Appellee.